

AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

John J. Collins

and

Case Number 96-02382

Name of Respondent

Smith Barney, Inc.

REPRESENTATION OF PARTIES

John J. Collins ("Claimant") was represented by Richard Parker, Esquire of Richard Parker & Associates located in Houston, Texas.

Smith Barney, Inc. ("Respondent") was represented by Suzanne S. Killian, Esquire of Odgen, Gibson, White & Broocks, L.L.P. located in Houston, Texas.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about June 4, 1996.

Claimant's Submission Agreement was signed on March 12, 1996.

Respondent's Statement of Answer was filed on or about July 15, 1996.

Respondent's Submission Agreement was signed on July 15, 1996 by James S. Goddard, Vice President.

HEARING INFORMATION

The hearing was held on: April 3, 1997 for two (2) sessions.

The hearing was held in: Houston, Texas.

CASE SUMMARY

In the Statement of Claim, Claimant John J. Collins sought to recover \$8,500 in damages from Respondent Smith Barney, Inc. as reimbursement of an alleged illegal withdrawal of funds from his account. On or about August 13, 1990, the Claimant's wife at the time, Susan Collins, allegedly sent a letter to the Respondent requesting a check in the amount of \$8,500 to be withdrawn from her account and sent to an address which was not the address on the account. The Claimant and his former wife held a joint money market account with the Respondent. As alleged, the Respondent issued a check made payable to John J. Collins and Susan Collins and forwarded the check pursuant to Susan Collins' written instructions. Claimant contended that the check was issued without his knowledge and consent. Claimant further contended that the check was negotiated solely by his former wife since the signature of John J. Collins on the back of the check was a forgery. Claimant stated that an operations manager of the Respondent indicated in a letter dated January 11, 1994 that a letter of authorization signed by both parties in a joint account would be required in order for a check to be mailed to an address other than the address on the account. On September 15, 1990, Claimant and his former wife signed a transfer authorization form instructing Respondent to transfer all the assets and to close the account. Despite demands by the Claimant, Respondent had allegedly refused to reimburse him for the check at issue.

In its Answer, Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated Claimant and his former wife executed a Joint Tenants Agreement (the "Agreement") upon opening their account which provided, in part, that "each of the joint tenants shall have the authority ... (c) to receive or withdraw money, securities, commodities or other property, (d) to execute agreements relating to the forgoing matters and to terminate, modify or waive any of the provisions thereof, and (e) generally to deal with you as fully as if he alone were interested in said account, all without notice to the other tenant or joint tenants." Respondent alleged that it was authorized to comply with Susan Collins' instructions pursuant to the express written authorization contained in the Agreement and that since the Claimant's demand had no basis, it should be dismissed. Respondent asserted the following affirmative defenses: (1) The Statement of Claim failed to state a claim upon which relief could be granted; (2) Any fiduciary duties owed to Claimant by Respondent were fully and faithfully carried out; (3) Claimant's claim was barred by the applicable statute of limitations and/or the doctrine of laches; (4) Claimant failed to mitigate any damages he may have suffered; (5) Claimant waived the claim asserted herein; (6) Claimant was barred, in whole or in part, from raising the claim asserted by the doctrine of ratification and affirmance or acquiescence in the conduct alleged; and (7) Claimant, by his conduct, and under all the circumstances of this case, was estopped from asserting the claim made herein.

RELIEF REQUESTED

Claimant requested an award in the amount of \$8,500 in actual damages plus attorney's fees.

Respondent requested that the claims asserted against it be denied in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive a conformed copy of the award while the original remains on file with the NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim submitted by John J. Collins is hereby denied in its entirety and dismissed with prejudice;
2. The parties shall bear their own costs including attorney's fees with the exception of forum fees which are specifically addressed below; and
3. Any relief requested not specifically granted herein is hereby denied in its entirety.

FORUM FEES

Forum fees are calculated at the rate of \$200 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) hearing sessions x \$200 = \$400 in forum fees. Pursuant to §10332(b) of the Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, the National Association of Securities Dealers Regulation, Inc. ("NASD Regulation") shall retain the non-refundable filing fee in the amount of \$75 and shall retain as forum fees the hearing session deposit in the amount of \$200 previously deposited with the NASD Regulation, Inc. by Claimant John J. Collins.

In accordance with §10333 of the Code, Respondent Smith Barney, Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the member surcharge in the amount of \$100.

Pursuant to §10332(c) of the Code, Respondent Smith Barney, Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the amount of \$200 in forum fees.

Fees are payable to the National Association of Securities Dealers, Inc. Office of Dispute Resolution.

Arbitrator's Signature:

Dated:

Michael E. McGown, Esquire
Michael E. McGown, Esquire
Public Arbitrator, Presiding Chair

May 23, 1997

For NASD Regulation, Inc. use only:
Date served on the parties: May 28, 1997