

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration BetweenName of Claimants

Andrew and Ernestine Hacskaylo

96-02503

Name of Respondents

Smith Barney, Inc. (fka Shearson Lehman Brothers, Inc.)
Gregory Torretta
Walter J. Oliphant
Gary W. Oliphant

REPRESENTATION

Claimants Andrew and Ernestine Hacskaylo ("Claimants") were represented by John H. Griffing, Esq., Alala Mullen Holland & Cooper, PA, Gastonia, NC.

Respondents Smith Barney, Inc. (formerly known as Shearson Lehman Brothers, Inc. "SB"), Gregory C. Torretta ("Torretta"), Walter Johnson Oliphant ("W. Oliphant") and Gary Walter Oliphant ("G. Oliphant") were represented by Victor A. Machcinski, Esq., Smith Barney, Inc., New York, NY.

CASE INFORMATION

The Statement of Claim was filed June 11, 1996.

Claimants' Uniform Submission Agreement was signed June 3, 1996.

The Joint Statement of Answer of SB, Torretta, W. Oliphant and G. Oliphant (collectively "Respondents") was filed September 9, 1996.

Respondents did not submit executed agreements to arbitrate.

HEARING INFORMATION

Hearing Dates/Sessions: December 16, 1997/two sessions
 December 17, 1997/two sessions
 December 18, 1997/one session

Hearing Location: Executive Park Hotel
 Charlotte, NC

CASE SUMMARY

Claimants, who are both in their seventies, alleged that they met Respondent W. Oliphant at a golf tournament in 1988 and he told Claimants that he was a registered representative with Respondent SB, then known as Shearson Lehman Brothers, Inc. Claimants alleged that W. Oliphant also represented that he personally handled the financial affairs of the Nicklaus family at Shearson, and that he was the past

president of a national association of Certified Public Accountants ("CPA"). Claimants asserted that the fact that W. Oliphant handled the Nicklaus family affairs and was past president of a national CPA association, influenced Claimants to transfer their accounts from Merrill Lynch to SB. Claimants contended that prior to 1988 their brokerage accounts with Merrill Lynch consisted of blue chip stocks and bonds consistent with their conservative investment goals. Claimants alleged that W. Oliphant had been informed that they held conservative investments and they wished to maintain a conservative portfolio.

Claimants alleged that W. Oliphant invited Claimants to his home in Florida in 1988 where he invited them to join the Oliphants, along with other selected individuals, in an investment "syndicate." Claimants alleged that W. Oliphant represented that this investment syndicate took advantage of a computerized option trading strategy developed by his son, G. Oliphant, which had proven successful in 75% of the trades it was utilized in. Claimants further alleged that based on the assurances of W. Oliphant, Claimants, to the best of their belief, joined the already-existing syndicate and its Option program. Claimants asserted that under the control of the Oliphants, the investment syndicate's option program, which included the Claimants' account, engaged in a recurrent pattern of OEX index option trades, which conforms to the definition of an "Options Program" under Section 18(c) of the NASD Rules of Fair Practice.

Claimants asserted that the Options Program undertaken by W. And G. Oliphant was speculative from inception and the inherent complexity of the instruments and their integral use in the option trading would be beyond the ability of most investors, even with options experience, to evaluate. Claimants alleged that the sensitivity of the naked positions, both puts and calls, to market events placed a premium on hands-on management by someone in a position to respond quickly to sudden market movements. Claimants contended that the non-adjustment of call strike prices following the January 1991 market advance upon the inception of the U.N. invasion of Kuwait could only be viewed as calling the market, and the call was that any advance was unjustified by events and would reserve itself.

Claimants alleged that beginning in February 1992, an Option Program's objective for the Claimants' account was to bide time by funding the Option Program's cumulative losses with the proceeds of the sale of deep-in-the-money call options. Claimants alleged that the bulk of these proceeds came from the sale of intrinsic value rather than time value and did not reflect the traditional reliance on a short option position as the sale of a "wasting asset" over time. Claimants alleged that the only means by which the sale of intrinsic value could be converted to profit was through a major market decline. Claimants further alleged that at this stage, despite assurances of a recoupment of profits by date-certain time horizon, Respondents' strategy was to put off the Claimants for as long as possible in the hope that the market would bail them out.

Claimants alleged breach of fiduciary duty, unsuitability, churning, negligent misrepresentation, numerous option-related claims, state law claims and a failure to supervise by SB.

Respondents denied all allegations of wrong-doing as asserted in the Statement of Claim. Respondents maintained that Claimants are knowledgeable and savvy investors and that Mr. Hacskaylo referred to himself as a self-made millionaire who understands and appreciates the risks inherent in this very aggressive options strategy. Respondents maintained that Claimants informed Respondents that the assets that were in the SB account were only a small fraction of their total net worth and furthermore that the assets were those that they could afford to take substantial risks with. Respondents maintained that the new account forms indicate that Claimants' net worth was \$1 million. In addition, Respondents contended that Claimants informed Respondents on March 27, 1991, subsequent to filling out the new

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account forms, that their net worth was many millions of dollars higher than the \$1 million as indicated on their new account form.

Respondents asserted that the risks of this option strategy were fully disclosed to Claimants many times in many different ways. Respondents maintained that Claimants received a very detailed booklet entitled "Characteristics and Risk of Standardized Options", and that brochure was followed up with a letter sent by SB which specifically asked if the Claimants were fully aware of the considerable risk of uncovered options. Respondents contended that Claimants signed the letter and returned it to the branch office. Respondents maintained that Claimants were also sent letters on July 9, 1990, April 30, 1991, August 14, 1991 and May 11, 1992, all of which were signed by Claimants acknowledging that they understood the nature of the risks involved in the options strategy. In addition to all these letters, Branch Manager Torretta spoke with Claimants in order to discuss naked options strategy and to re-emphasize the substantial risks inherent in any naked options strategy. Respondents maintained that Torretta urged Claimants to consider whether or not they wanted to continue with this kind of risky options strategy. Respondents asserted that Claimants stated that they were fully aware of the risk, were risk-takers, and had become wealthy through starting up and owning their own business because they were willing to take risks. Finally, Respondents maintained that Claimants informed Torretta that they wanted to continue investing in options and rejected Torretta's suggestions of more conservative and diversified investments.

Respondents maintained that there were no misrepresentations and no unauthorized trading. Respondents maintained that the strategy was suitable for Claimants and consistent with Claimants' stated objectives. Respondents further maintained that any losses suffered by Claimants were the result of Claimants' own decisions and the market performance of an inherently speculative investment strategy.

Respondents raised the affirmative defenses of a failure to state a cause of action upon which relief can be granted; all transactions were authorized; claims barred by the doctrines of laches and the applicable statute of limitations; estoppel; waiver; ratification; no proximate cause; Claimants' contributory negligence; assumption of risk; and a failure to mitigate damages.

RELIEF REQUESTED

Claimants requested actual damages of \$661,284.00, all of Claimants' costs, expenses and disbursements, including attorneys' and expert witness fees associated with this arbitration, as well as pre-award and post-award interest on the damages.

Respondents requested that all claims against them be denied in their entirety, and at the hearing, the individual Respondents requested that all references to these claims and this arbitration be expunged from their CRD records.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

Pursuant to the by-laws of the NASD, the panel determined that Respondents are required to submit to arbitration, notwithstanding their failure to file executed agreements to arbitrate. Therefore, Respondents are bound by the rulings and determinations of the panel.

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AWARD

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

1. That the Statement of Claim is denied in its entirety; and
2. That each party shall bear its own costs and expenses, including attorneys' fees, with the exception of the Forum Fees as discussed below; and
3. That all references to this arbitration and these claims shall be expunged from the CRD records of Respondents Gregory C. Torretta, Walter Johnson Oliphant and Gary Walter Oliphant; and
4. That any and all relief not specifically addressed herein is denied.

OTHER COSTS

Pursuant to Rule 10333 of the NASD Regulation Code of Arbitration Procedure ("Code") Respondent Smith Barney, Inc. is assessed a member surcharge of \$500.00. Respondent SB shall receive credit for the surcharge deposit of \$500.00 previously submitted to the NASD Regulation, leaving no further member surcharge due.

FORUM FEES

Pursuant to Rule 10332(c) of the Code, the following Forum Fees are assessed:

5 sessions x \$1,000.00 = \$5,000.00


Forum Fees are assessed to Claimants. Claimants shall receive credit for the \$1,000.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimants of \$4,000.00.

Fees are payable to the National Association of Securities Dealers Regulation, Inc.

DATE

12/31/97

CONCURRING ARBITRATORS' SIGNATURES


Leonard Landsman, Presiding
Public Arbitrator

Thomas S. Wallace
Public Arbitrator

James R. Shields
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 14, 1998

930103

AWARD

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

1. That the Statement of Claim is denied in its entirety; and
2. That each party shall bear its own costs and expenses, including attorneys' fees, with the exception of the Forum Fees as discussed below; and
3. That all references to this arbitration and these claims shall be expunged from the CRD records of Respondents Gregory C. Torretta, Walter Johnson Oliphant and Gary Walter Oliphant; and
4. That any and all relief not specifically addressed herein is denied.

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DATE

CONCURRING ARBITRATORS' SIGNATURES

January 2, 1998

Leonard Landsman, Presiding
Public Arbitrator

Thomas S. Wallace
Thomas S. Wallace
Public Arbitrator

James R. Shields
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 14, 1998

980164

AWARD

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

1. That the Statement of Claim is denied in its entirety; and
2. That each party shall bear its own costs and expenses, including attorneys' fees, with the exception of the Forum Fees as discussed below; and
3. That all references to this arbitration and these claims shall be expunged from the CRD records of Respondents Gregory C. Torretta, Walter Johnson Oliphant and Gary Walter Oliphant; and
4. That any and all relief not specifically addressed herein is denied.

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Leonard Landsman, Presiding
Public Arbitrator

Thomas S. Wallace
Public Arbitrator

1-2-98

James R. Shields
James R. Shields
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 14, 1998