

AWARD**NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.**

*In the Matter of the Arbitration Between***Name of Claimant**

Michael Wright

96-02527

Name of Respondent

Smith Barney, Inc.

REPRESENTATION

For Claimant Michael Wright ("Wright"): Debra Raskin, Esq. of Vladeck, Waldman, Elias & Engelhard, P.C., New York, New York.

For Respondent Smith Barney, Inc. ("Smith Barney"): Michael W. Casey, III, Esq. of Muller, Mintz, Kornrieck, Caldwell, Casey, Crosland & Bramnick, P.A., Miami, Florida.

CASE INFORMATION

Statement of Claim filed: June 11, 1996.

Claimant's Submission Agreement signed: May 23, 1996.

Statement of Answer filed by Respondent Smith Barney: August 2, 1996.

Respondent's Submission Agreement/Corporate Acknowledgment signed: August 2, 1996 by Scott E. Kresch on behalf of Smith Barney.

HEARING INFORMATION

On March 5, 1997 a telephonic pre hearing conference was conducted with the entire panel.

On March 18, 1997 a second telephonic pre hearing conference was conducted with the Chairperson.

On June 9, 10, 11, 16 and 17, 1997 and July 15 and 16, 1997, hearings lasting twelve (12) sessions were conducted in Fort Lauderdale, Florida.

CASE SUMMARY

Claimant alleged that Respondent Smith Barney violated the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq. (the "ADA") (1) by failing to make reasonable accommodations for Claimant's disability, namely Chronic Fatigue Syndrome ("CFS"); and, (2) by terminating

Page 2

NASD Award #96-02527

Wright's employment on account of his disability, and/or the perception that he suffered from Acquired Immuno-Deficiency Syndrome ("AIDS"). Claimant maintained that he is not precluded from making a claim for damages under the ADA because he applied for and is receiving long-term disability benefits from a private insurer. Claimant further alleged that Respondent defamed him (1) by falsely and negligently informing his clients that he was too ill to work, leaving some of his clients to believe, incorrectly, that Claimant suffered from AIDS, and/or that he could not perform his job; and, (2) by issuing with malice a U-5 form that gave the false impression that Wright was unfit for his job and could not be trusted to handle his own finances. Claimant contended that he did not waive his right to sue Smith Barney for defamation by signing a U-4 form.

Respondent denied the allegations of wrongdoing contained in the Statement of Claim and maintained that it did not violate the ADA in any respect; that Claimant is estopped from claiming he was a qualified individual with a disability because of his claim for long term disability benefits; that Respondent had legitimate, non-discretionary reasons for terminating Claimant; that Respondent did not improperly delay, interfere or obstruct any reasonable accommodations requested by Claimant; and, that to the contrary, Respondent granted Claimant several reasonable accommodations. Respondent further maintained that one of its managers mistakenly told some customers of Claimant that Claimant had left Respondent's employ on account of an illness but the manager immediately contacted Claimant's customers and corrected his misstatements and on the day Respondent asked for Claimant's resignation, Claimant sent a letter via facsimile to Respondent stating that he could no longer work on account of his illness. Respondent contended that Claimant was not damaged in any respect by statements made to any customers; that the statement in the U-5 form was true, and is not libelous; that, alternatively, the statement in the U-5 form is absolutely or qualifiedly privileged; that alternatively, Claimant waived his right to sue for any statement in the U-5 form; that Claimant has not established that he is entitled to any damages in any amount; and, that Claimant is estopped from claiming damages because of his claim for long term disability payments. Respondent further asserted a counterclaim against Claimant for the unpaid balance of a forgivable loan made to Claimant when he first became employed by Respondent.

In response to the counterclaim Claimant maintained that Respondent's claim for repayment of the balance of the forgivable loan is retaliatory and should be dismissed.

RELIEF REQUESTED

Claimant requested compensation for his injuries in a total amount of not less than \$5,000,000.00, plus interest, punitive damages, costs and attorneys' fees. Claimant further requested dismissal of the counterclaim and that his U-5 form be amended.

Respondent requested that the claim be dismissed in its entirety and that Smith Barney be awarded relief on its counterclaim.

OTHER ISSUES CONSIDERED & DECIDED

The parties have stipulated that the panel may determine entitlement to attorneys' fees.

Page 3
NASD Award #96-02527

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 NASD Regulation, Inc.

AWARD

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

1. Respondent Smith Barney is found liable and shall pay to the Claimant the sum of \$1,325,000.00, inclusive of pre-judgment interest (\$300,000.00 of which represents an award for emotional pain, suffering, inconvenience, mental anguish and loss of enjoyment of life).
2. Respondent Smith Barney shall pay to Claimant post-judgment interest at the statutory rate pursuant to Rule 10330(h) of the Code of Arbitration Procedure.
3. Respondent Smith Barney shall pay to Claimant his attorneys' fees and recoverable costs, the amounts of which shall be determined by a court of competent jurisdiction.
4. Respondent Smith Barney shall reimburse to the Claimant the sum of \$1,500.00 which represents the hearing session deposit previously paid to NASD Regulation, Inc. by the Claimant.
5. Respondent's counterclaim is hereby denied.
6. Claimant's U-5 form shall be amended to state that Claimant left the employ of Smith Barney, Inc. for "personal reasons."
7. Claimant's request for punitive damages is denied

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$19,800.00 (twelve (12) hearing sessions X \$1,500.00 + one (1) pre hearing conference (with the entire panel) x 1,500.00 + one (1) pre hearing conference (with the Chairperson) x \$300.00).

1. Respondent Smith Barney is hereby assessed forum fees in the amount of \$19,800.00 for which NASD Regulation, Inc. shall retain the \$1,500.00 previously deposited by the Claimant in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. by Respondent of \$18,300.00.
2. NASD Regulation, Inc. shall retain the claim filing fee of \$500.00 paid by the Claimant.
3. NASD Regulation, Inc. shall retain the member surcharge of \$500.00 paid by the Respondent pursuant to Rule 10333 of the Code.

Page 4
NASD Award #96-02527

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

Meah Dell Rothman-Tell, Esq.

Public/Chair

/s/

Sheldon N. Reibman

Public/Panelist

/s/

Charles T. Steffens

Industry/Panelist

Date of Decision: July 31, 1997