

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

George V. Daniels

96-02713

Name of Respondents

Smith Barney, Inc.
The Robinson-Humphrey Co., Inc.

REPRESENTATION

Claimant George V. Daniels ("Claimant") was represented by Andrew P. Campbell, Esq., Campbell & Waller, Birmingham, AL.

Respondents The Robinson-Humphrey Co., Inc. ("RH"), a subsidiary of Smith Barney, Inc. ("SB") were represented by Marcie Mintz, Associate General Counsel, Smith Barney, Inc., New York, NY.

CASE INFORMATION

The Statement of Claim was filed June 24, 1996.

Claimant's Uniform Submission Agreement was signed July 2, 1996.

The Joint Statement of Answer of RH and SB (collectively "Respondents") was filed September 20, 1996. SB's Uniform Submission Agreement was signed September 20, 1996.

HEARING INFORMATION

Hearing Dates/Sessions: February 4, 1997/two sessions
February 5, 1997/three sessions

Hearing Location: Buckhead Courtyard Marriott
Atlanta, GA

CASE SUMMARY

Claimant alleged, among other things, that Respondents unjustly terminated him when he was in the process of taking early retirement, put incorrect information on his form U-5 and refused or failed to provide Claimant with appropriate retirement and deferred compensation. Claimant alleged that he participated in investment and deferred compensation opportunities offered by Respondent designed to compensate executives who achieved certain levels of performance and throughout Claimant's employment with Respondents, he met or exceed performance criteria established. Claimant alleged that from 1980 through 1994, he developed unique investment programs designed for specific customers of Respondent and that these programs were marketed as Respondent's products. Claimant alleged that

beginning in 1993, he began developing a more advanced investment strategy known as Quantidex Process ("Quantidex") and that Respondents were fully aware of Quantidex, which they neither rejected or approved. Claimant alleged that he continued design of Quantidex and incorporated Daniels & Alldredge Investment Management, Inc. ("D&A") in June 1994 as a registered investment advisory firm. Claimant was the majority shareholder of D&A, but was not an officer, director or employee. Claimant alleged that the formation of D&A was disclosed to Respondents and that he continued to work full time as a financial consultant for Respondents. Claimant alleged that during 1994 he began discussions with State Street Bank & Trust Company of Boston ("State Street") regarding management of the new investment program, to be called the Quantidex Global Funds, which would be sold by Respondents the same as any other investment product. Again, Claimant alleged that Respondents were fully informed of the progress and neither rejected nor agreed to State Street managing Quantidex despite repeated requests by Claimant during the last half of 1994 to make a decision about Quantidex.

Claimant alleged that suddenly on December 12, 1994, Respondent informed Claimant that a decision had been made to reject Quantidex and that Claimant would be fired if he did not divest himself of his shares in D&A within two days. Claimant requested that he be allowed to remain a Financial Consultant with Respondent until the end of the year so that he could receive deferred compensation to which he would be entitled as an employee on December 31, 1994. Claimant alleged that Respondent informed him that he could remain an employee until the end of the year and thus qualify for additional compensation, bonuses, deferred compensation, and other retirement benefits but only if he immediately divested himself of his interest in D&A. Claimant alleged that he was also informed that he would be allowed to take early retirement after January 1, 1995. Acting in reliance on the representations made by Respondents, Claimant divested himself of his interest in D&A and remained an employee of Respondents through the end of 1994. Claimant alleged that he qualified for early retirement in January 1995 and beginning in January and continuing through March 23, 1995, Claimant repeatedly requested information regarding the process to elect early retirement and information as to the amounts of compensation he was entitled to receive from the various deferred compensation plans and performance compensation plans. Claimant alleged that Respondents refused or failed to provide Claimant with the necessary information and without any notice terminated Claimant's employment on March 24, 1995. Claimant alleged that on or about April 1, 1995, Claimant became an employee of D&A, but he did not purchase any shares of stock. Claimant alleged that several weeks after termination, Respondents informed him that a form U-5 would be filed which indicated that termination was for "conducting unauthorized business". Claimant alleged that the slanderous information contained on the U-5 caused D&A to be required to amend registration filings with various state securities regulatory agencies at considerable expense. Claimant alleged that Respondents conspired to confiscate Claimant's business and customers and refused to allow Claimant to sell his practice as authorized by the Financial Consultant Franchise Protection Program designed and described in Respondents' employee handbook. Claimant alleged that Respondents' fraudulent misrepresentations were made with the knowledge of their falsity or were made with reckless disregard for their truthfulness. Claimant alleged that he suffered severe economic loss as the result of Respondents' actions.

Respondents denied the allegations of wrong-doing as asserted in the Statement of Claim. Respondents maintained that in December 1994, Claimant met with the Branch Manager and Regional Manager to discuss issues relative to D&A. Respondents maintained that the Regional Manager informed Claimant that he could not continue employment with Respondents while owning shares in D&A, a business that may be in competition with Respondents. Respondents believed D&A to be a registered investment advisory firm. Respondents maintained that Claimant represented that he had made one presentation promoting an investment program which had not been approved for marketing by Respondents and he

was informed not to make any further presentations or promotions for any investment program not approved by Respondents.

Respondents maintained that Claimant was expressly told that if he were to retire at year end, his retirement benefits would depend upon whether or not he went to work for a competitor or was in a competing business and that he would forfeit certain benefits if it were determined that he was in a competing business. Respondents maintained that each time Claimant requested information around the status of his benefits if he were to retire, Claimant was told that nothing could be provided to him in writing since whether or not he would be in "competition" with the Respondents could not yet be determined, which would directly impact on his benefits. Respondents maintained that they learned on March 22, 1995 that Claimant was making a presentation that day, but not as a representative of Respondents, rather Claimant was representing D&A. Respondents maintained that during that same week in 1995, Claimant attended the annual meeting of the Alabama Security Dealers Association and was registered as an associate of D&A. Respondents maintained that on March 24, 1995, Claimant was terminated based upon the fact that he continued to represent D&A while employed by Respondents. Subsequently, Respondents maintained that Claimant was informed of the fact that he qualified for early retirement and that unvested deferred compensation balances are held for two years from the date of termination. Respondents maintained that letter plainly stated that distribution of said monies would be forfeited if Claimant became employed by a competitor during that two year period. Respondents maintained that as Claimant became employed by a competitor during the two year period, he knowingly forfeited those monies. In addition, Respondents raised the affirmative defenses of failure to state a claim upon which relief may be granted; termination was based on unauthorized outside business activity; claims barred by applicable statute of limitations; claims barred in whole or in part by Statute of Frauds; laches and that as Claimant went to work for a competitor within the two year period, he is not entitled to early retirement benefits.

RELIEF REQUESTED

Claimant requested damages in excess of Five Million Dollars (\$5,000,000.00) based on lost income from the confiscation of his practice, deferred compensation, injury to reputation and loss of business opportunities, as well as punitive damages.

Respondents requested that the Statement of claim be dismissed in its entirety, together with costs and attorney's fees.

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.

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 Respondents The Robinson-Humphrey Co., Inc. and Smith Barney, Inc. are jointly and severally liable to and shall pay to Claimant the sum of \$828,711.15.
2. That the request for punitive damages is denied.
3. That Respondents The Robinson-Humphrey Co., Inc. and Smith Barney, Inc. are jointly and severally liable to and shall reimburse to Claimant the \$1,500.00 hearing session deposit previously submitted to the NASD Regulation by Claimant.
4. That each party shall bear its own costs and expenses, including attorneys fees, with the exception of the Forum Fees as discussed below.
5. That any and all relief not specifically addressed herein is denied.

FORUM FEES

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

5 sessions x \$1,500.00 = \$7,500.00

Forum Fees are assessed to Respondents The Robinson-Humphrey Co., Inc. and Smith Barney, Inc., jointly and severally. Respondents shall receive credit for the \$1,500.00 hearing session deposit submitted by Claimant and reimbursed to Claimant by Respondents, leaving a net assessment due to the NASD Regulation of \$6,000.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

2/12/97

Christopher J. Moran, Jr.
Christopher J. Moran, Jr., Chairman
Public Arbitrator

Fred R. Slotkin
Public Arbitrator

Chesley V. Morton, Jr.
Industry Arbitrator

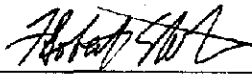
Date Decision Served by NASD Regulation: February 25, 1997

DATE

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Christopher J. Moran, Jr., Chairman
Public Arbitrator

2-12-97


Fred R. Slotkin
Public Arbitrator

Chesley V. Morton, Jr.
Industry Arbitrator

Date Decision Served by NASD Regulation: February 25, 1997

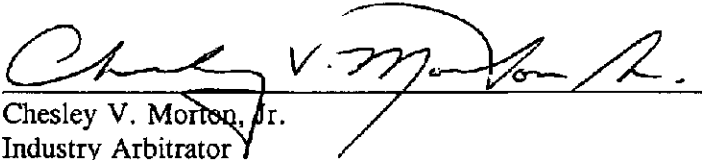
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