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AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Juan O. Carden and
Juan O. Carden, Trustee under
Juan O. Carden Trust Agreement,
Claimant,

v.

96-02748

Smith Barney, Inc., and
Irwin Shayne,
Respondents.

REPRESENTATION OF PARTIES

Juan O. Carden and Juan O. Carden, Trustee under Juan O. Carden Trust Agreement, ("**Claimant**") was represented by Alan G. Gearson, Esq., of Blumenfeld, Kaplan & Sandweiss, P.C., St. Louis, Missouri.

Smith Barney, Inc. ("**SBS**"), and Irwin Shayne ("**Shayne**") (jointly referred to as "**Respondents**") were represented by Elaine H. Mandelbaum, Esq. of Smith Barney, Inc., New York, New York.

CASE INFORMATION

Claimant filed the Statement of Claim on or about June 26, 1996. Claimant signed Submission Agreements on June 17, 1997 and July 16, 1997.

Respondents filed their joint Statement of Answer on or about September 26, 1996. Respondents signed their Submission Agreements on April 10, 1997 and March 24, 1997 respectively.

HEARING INFORMATION

The Arbitration Panel held a hearing on October 27, 1997 for two (2) sessions, October 28, 1997 for two (2) sessions, and October 29, 1997 for two (2) sessions in St. Louis, Missouri for a total of six (6) sessions.

CASE SUMMARY

Claimant alleged that: Shayne failed to execute an order to sell shares of Coram Health Care Corporation ("**Coram**") pursuant to a meeting with Claimant where Shayne was instructed to sell Coram when it reached \$25 per share; neither Shayne nor anyone else at SBS sold the shares at \$25;

Shayne had acknowledged Claimant's instructions to sell on several occasions; when contacted about his failure to execute Claimant's order, Shayne advised Claimant to buy further shares of Coram stating that there was nothing to worry about because Coram would be going up again in price; and that Respondents have not offered any explanation as to their failure and refusal to carry out Claimant's specific instructions to sell Coram at \$25 per share.

Unless otherwise admitted in their Answer, Respondents denied the allegations set forth in the Statement of Claim. Respondents asserted the following affirmative defenses: The Statement of Claim fails to state a claim upon which relief may be granted; Claimant has failed to mitigate damages; Claimant ratified, approved and acquiesced in the transactions in the accounts, and is barred by laches, waiver and estoppel; SBS did not act with scienter; SBS did not breach any duty it owed to Claimant; the losses complained of were the result of market forces and not culpable conduct by SBS; and SBS is not responsible for losses caused by misrepresentations and omissions made by T-Square.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested an award of the following: \$402,416.69 for his out of pocket losses; interest at 9% from no later than March 31, 1995 on the amount of his actual losses; punitive damages in the amount of \$500,000; and costs in this arbitration.

Respondents requested that the Statement of Claim be dismissed and that they be awarded the costs of this proceeding.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing in this matter, Claimant withdrew its claim for punitive damages.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

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

Claimants claims filed against Smith Barney, Inc., and Irwin Shayne are, and each of them, denied with prejudice. Further, the undersigned arbitrators order the NASD to expunge Irwin Shayne's record of the claims made herein.

Each party shall bear its own costs and expenses associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each pre-hearing conference, if any. There were six sessions x \$1,000 = \$6,000 in forum fees. Pursuant to Rule 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 Rule 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$250 and shall retain as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to Rule 10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$500 previously paid by SBS.

Additional forum fees in the amount of \$2,000 are assessed by the arbitrators against the Claimant.

Additional forum fees in the amount of \$3,000 are assessed by the arbitrators against SBS.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

Keith Mattern
Keith Mattern
Public Arbitrator, Presiding Chair

/s/

December 1, 1997

John E. Hoffman
John E. Hoffman
Public Arbitrator

/s/

December 3, 1997

Theresa A. Secrest
Theresa A. Secrest
Industry Arbitrator

/s/

December 1, 1997