

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Carolyn Ransome and John D. Ransome III

96-02909

Name of Respondents

Smith Barney Inc.
Richard T. Gendelman

REPRESENTATION

Claimants Carolyn Ransome and John Ransome ("Claimants") were represented by Adam S. Doner, Esq., Davis, Gordon, Doner & Chandler, West Palm Beach, FL.

Respondents Smith Barney, Inc. ("SB") and Richard T. Gendelman ("Gendelman") were represented by William A. Hohaus, Esq., Smith Barney, Inc., New York, NY.

CASE INFORMATION

The Statement of Claim was filed on July 8, 1996.

Claimants' Uniform Submission Agreement was signed on June 27, 1996.

The Joint Statement of Answer filed by SB and Gendelman (collectively "Respondents") was filed on October 2, 1996.

SB's Uniform Submission Agreement was signed on October 2, 1996.

Gendelman's Uniform Submission Agreement was signed on October 2, 1996.

HEARING INFORMATION

Pre-Hearing Conferences/Sessions: March 26, 1997/one session
July 17, 1997/one session

Hearing Dates/Sessions: July 29, 1997/two sessions
July 30, 1997/two sessions
July 31, 1997/two sessions
August 14, 1997/two sessions
August 18, 1997/one session

Hearing Location: NASD Regulation District Office
Philadelphia, PA

CASE SUMMARY

Claimants, John D. Ransome, III, at age 20, and his mother, Carolyn Ransome, came into over \$400,000.00 from a wrongful death claim as a result of the untimely death of John Ransome's father in a plane crash. The money was held jointly by John and his mother, Carolyn. Claimants alleged Respondent Gendelman encouraged John to trade excessively, in both frequency and size, with a reckless disregard for the best interest of the Claimants.

Claimants alleged, among other things, that the losses sustained in their accounts were due to the fraudulent, negligent, unlawful, and improper conduct of Respondents. Claimants alleged that Respondents effected purchases and sales of securities for the accounts which were unsuitable in view of the Claimants' investment objectives and financial situation. Claimants further alleged that Respondents made fraudulent misrepresentations and omissions of material facts in connection with the purchase and sale of securities, particularly with regard to the risks associated with the speculative investments purchased by Gendelman and these misrepresentations and omissions occurred on an ongoing and continual basis. Claimants alleged that Respondents made fraudulent misrepresentations and omissions as to the violations committed by Gendelman in the management of Claimants' accounts, as well as general problems and/or violations Gendelman committed in the securities industry.

Claimants alleged that Gendelman effectuated short-term purchase and sale transactions many of which resulted in losses and were for the primary purpose of benefitting Respondents through the production of substantial commissions rather than for the purpose of fulfilling Claimants' investment objectives. Claimants alleged that Respondent Smith Barney failed to adequately supervise Gendelman and prevent securities violations from occurring.

Claimants asserted that Respondents' actions constituted breach of contract, negligence, gross negligence, breach of fiduciary duty, conspiracy, violation of federal and state securities and consumer protection laws and violations of rules and regulations of the National Association of Securities Dealers, Inc. and the various securities exchanges of which Smith Barney is a member.

Respondents denied any liability to Claimants. As a preliminary matter, Respondents asserted that the vast majority of the more aggressive equity trades in the accounts were made at the suggestion of Claimant John Ransome. Respondents asserted that in the second account, in particular, ten (10) of eleven (11) equities, were purchased at John Ransome's insistence. Respondents maintained that in the first account, the dollar percentage of transactions initiated at John Ransome's insistence was approximately seventy (70%) percent. Respondents asserted that Gendelman did not trade these securities (either at any time or contemporaneously) in other clients' accounts. Respondents further maintained that they were not asked for advice on these transactions, which were purely unsolicited. Given these facts, Respondents submitted that Claimant John Ransome was in sole control over the accounts at all times and hence there can be no churning finding made against Respondents.

Respondents maintained that Claimant John Ransome was the driving force behind the trading in these accounts, and that he desired to trade aggressively. Respondents further maintained that Claimant John Ransome engaged in significant, aggressive trading without input from Gendelman while Gendelman was on vacation in Europe. Moreover, Respondents asserted that to further his investment goals, Claimant John Ransome purchased a quotrek machine which provided him with (almost) real-time quotes. In addition, Respondents maintained that Claimant John Ransome maintained another account contemporaneously with a different brokerage firm which was traded even more aggressively than the

Smith Barney accounts. Respondents argued that this account supplied more proof of Claimant John Ransome's investment intent.

Respondents also maintained that they sought to restrain Claimant John Ransome from some of his more aggressive trading. Respondents asserted that upon Gendelman's return from Europe, when Gendelman learned of Claimant John Ransome's trading, he cautioned Mr. Ransome against such a course. Respondents maintained that both Gendelman, and his supervisor, Richard Carlin, had meetings with Claimant John Ransome in which they warned him of the risks of aggressive trading as well as the costs involved. Respondents maintained that Claimant John Ransome acknowledged these meetings and cautions and gave written confirmation to Smith Barney that he was cognizant of the risks and rewards of his chosen trading strategy. Therefore, Respondents maintained that any losses suffered by Claimants were the result of Claimants' own decisions.

RELIEF REQUESTED

Claimants requested that Respondents be held jointly and severally liable for \$138,000.00; as well as costs, expenses and disbursements, including reasonable attorneys' fees and expert witness fees incurred in pursuing this arbitration, pursuant to the New Jersey Unfair Trade Practices and Consumer Protection laws and Pennsylvania Unfair Trade Practice and Consumer Protection laws as well as any other relief the arbitration panel deems just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety, that Claimants pay all costs, including attorneys' fees, and that this Complaint be expunged from Mr. Gendelman's CRD record.

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 and post hearing submissions, 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.
2. That each party shall bear its own costs and disbursements including attorney's fees.
3. That the request that reference to this arbitration be expunged from Gendelman's CRD record is denied.
4. That any and all relief not specifically addressed herein is denied.

OTHER COSTS

Pursuant to Rule 10333 Respondent Smith Barney shall be assessed the member surcharge of \$350.00. Respondent Smith Barney shall receive credit for the surcharge deposit previously submitted leaving no further assessment due.

FORUM FEES

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

2 pre-hearing session x \$300 =	\$ 600.00
9 hearing sessions x \$750.00 =	<u>\$6,750.00</u>
Total Forum Fees	\$7,350.00

Forum Fees are assessed to Claimants, jointly and severally, for \$3,675.00 and to Respondents, jointly and severally, for \$3,675.00. Claimants are to receive credit for the hearing session deposit of \$750.00 previously submitted to the NASD Regulation, leaving a net assessment due from Claimants of \$2,925.00. Respondents have a net assessment due of \$3,675.00

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

8/28/97



John J. Jordan, Presiding
Public Arbitrator

Henry H. Reichner, Jr.
Public Arbitrator

Jerry Brown
Industry Arbitrator

Date Decision Served by NASD Regulation: September 10, 1997

FORUM FEES

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

2 pre-hearing session x \$300 =	\$ 600.00
9 hearing sessions x \$750.00 =	<u>\$6,750.00</u>
Total Forum Fees	\$7,350.00

Forum Fees are assessed to Claimants, jointly and severally, for \$3,675.00 and to Respondents, jointly and severally, for \$3,675.00. Claimants are to receive credit for the hearing session deposit of \$750.00 previously submitted to the NASD Regulation, leaving a net assessment due from Claimants of \$2,925.00. Respondents have a net assessment due of \$3,675.00

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

John J. Jordan, Presiding
Public Arbitrator

August 27, 1997

Henry H. Reichner, Jr.
Henry H. Reichner, Jr.
Public Arbitrator

Jerry Brown
Industry Arbitrator

Date Decision Served by NASD Regulation: September 10, 1997

FORUM FEES

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

2 pre-hearing session x \$300 =	\$ 600.00
9 hearing sessions x \$750.00 =	<u>\$6,750.00</u>
Total Forum Fees	\$7,350.00

Forum Fees are assessed to Claimants, jointly and severally, for \$3,675.00 and to Respondents, jointly and severally, for \$3,675.00. Claimants are to receive credit for the hearing session deposit of \$750.00 previously submitted to the NASD Regulation, leaving a net assessment due from Claimants of \$2,925.00. Respondents have a net assessment due of \$3,675.00

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

John J. Jordan, Presiding
Public Arbitrator

Henry H. Reichner, Jr.
Public Arbitrator

8/31/97

Jerry Brown
Jerry Brown
Industry Arbitrator

Date Decision Served by NASD Regulation: September 10, 1997