

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Antoinette M. Hiatt,

Claimant,

vs.

96-03032

David Jacobson, and

Smith Barney, Inc.,

Respondents.

REPRESENTATION OF PARTIES

Claimant Antoinette M. Hiatt ("Claimant") appeared on her own behalf.

Respondents David Jacobson ("Jacobson"), and Smith Barney, Inc. ("SBI") (or referred to jointly as "Respondents") were represented by Bruce E. Samuels, Esq., of Lewis & Roca, Phoenix, Arizona.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about July 17, 1996. Claimant's Submission Agreement was signed on July 11, 1996. Claimant's letter dated November 14, 1996.

Respondents' Statement of Answer was filed on or about October 9, 1996. Respondent Jacobson's Submission Agreement was signed on October 3, 1997. Respondent SBI's Submission Agreement was signed on October 1, 1997.

HEARING INFORMATION

The hearing was held on: April 9, 1997 for one (1) session.

The hearing was held in Scottsdale, Arizona.

CASE SUMMARY

Claimant alleged that: She met Jacobson in the spring of 1985 and agreed to have him manage her investments; Jacobson made all of the recommendations, purchases, transfers, suggestions, and other transactions; Jacobson always assured her that all was well and that he was taking care of things; on August 4, 1986 her shares of Investments Portfolio, Inc./Kemper Government Fund were delivered into the SBI account by request of SBI without Claimant's knowledge; sometime in early 1987, the shares were exchanged into an Equity Portfolio in the SBI account; on August 5, 1987 the

shares were delivered to be transferred into the government account by Jacobson's advice and action; never during this time was any investment, exchange, transfer or any other change in this account done at her direction; this investment was completely under Jacobson's direction; Jacobson failed to follow up on the last transaction constituting breach of contract; in December of 1993, Claimant was contacted by a letter from Keane Tracers, Inc. ("Keane") informing her that she was entitled to some funds that were about to be disposed of, and if she agreed to pay 25% of the funds, Keane would give her additional information; after signing the agreement, Claimant received a letter from Keane dated January 11, 1994 informing her that the Kemper Government Fund being classified abandoned; and Jacobson did not fulfill his fiduciary or contractual obligations by letting the Kemper Government Fund be classified as abandoned.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that: Claimant relied on her son's and accountant's advice as well as Jacobson's; her shares of the equity portfolio were transferred out of her account in August of 1987 as a direct result of her son's advice; once Claimant's shares of Equity Portfolio were transferred out of her SBI account to Investment Portfolios, neither SBI nor Jacobson was aware of the status of this position; Claimant never informed SBI or Jacobson that she had stopped receiving statements from Investment Portfolios; and it is not the fault of Respondents that Claimant failed to inform Investment Portfolios of her change of address. In addition, Respondents also asserted the following affirmative defenses: Claimant fails to state a claim upon which relief can be granted; Respondents are not in violation of any rules, regulations or applicable laws; Claimant is barred from recovery of any damages by the doctrines of ratification, waiver, and estoppel; Respondents were not in a fiduciary relationship with Claimant under the circumstances of this case and as a matter of law no fiduciary duty was owed to Claimant; Respondents did not make any misstatements of material facts upon which Claimant's detriments relied; any duties owed to the Claimant were fully and faithfully carried out; Claimant is barred from recovery because she authorized and consented to every transaction at issue; the damages allegedly suffered by the Claimant has no causal relationship to any act committed by or legally attributable to the Respondents; and Claimant's requests for damages is legally invalid.

RELIEF REQUESTED

Claimant requested an award in the amount of \$6,261.53 against the Respondents.

Respondents requested that the Statement of Claim be dismissed in its entirety.

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 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

After considering the claim and the evidence presented, Claimant's claim has been found to be without merit and that any damages Claimant may have suffered were not attributable to any act or omission on the part of Respondents. Therefore, Claimant's claims are, and each of them, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$200 per hearing session. There was one (1) session x \$200 = \$200 in forum fees. Pursuant to §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 §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$75 and shall **retain** as forum fees the hearing session deposit in the amount of \$200 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$100 previously paid by Respondent.

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

Dated:

Donald B. Clark

Donald B. Clark
Public Arbitrator, Presiding Chair

/s/

April 16, 1997