

NASD REGULATION AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Charles Schwab & Company, Inc.

96-03485

Name of Respondents

Smith Barney Inc. (n/k/a Salomon Smith Barney, Inc.)
Patience L. Taylor
David Kirkwood
John H. Wellington

Name of Third Party Respondent

Vicki L. Isom

REPRESENTATION

For Claimant Charles Schwab ("Claimant"): Jeffrey L. Levy, Esq., of the law firm of Heidlage & Reece, P.C., Boston, MA.

For Respondents Smith Barney, Inc. ("Smith Barney"), Patience L. Taylor ("Taylor"), John H. Wellington ("Wellington"): Edward J. Boyle, Esq. of the law firm of Wilson, Elser, Moskowitz, Edelman, New York, NY.

For Respondent David Kirkwood ("Kirkwood"): Peter J. Paulousky, Esq. of the law firm of Gilmore, Rees & Carlson, P.C., Franklin, MA.

For Third Party Respondent Vicki L. Isom ("Isom"): Jeffrey L. Levy of the law firm of Heidlage & Reece, P.C., Boston, MA.

CASE INFORMATION

Statement of Claim filed: August 12, 1996

Claimant's Submission Agreement executed by Linda L. Drucker, Vice President and Senior

Corporate Counsel of Charles Schwab & Co., Inc. on: August 9, 1996

Joint Statement of Answer and Counterclaim Against Charles Schwab and Third Party Claim against Isom filed by Respondents Smith Barney, Wellington, Kirkwood and Taylor on: September 30, 1996

Smith Barney's Submission Agreement executed by Eugene V. Clark, Senior Vice President of Smith Barney, Inc. on: September 27, 1996

Wellington's Submission Agreement executed on: September 30, 1996

Kirkwood's Submission Agreement executed on: September 30, 1996

Taylor's Submission Agreement executed on: September 30, 1996

Claimant and Isoms' response to Counterclaim/Third Party Claim filed on: November 19, 1996

HEARING INFORMATION

Pre-Hearing Conference: one session with full panel on July 22, 1996
one session with chair on September 19, 1996

Hearing Dates/Sessions: December 19, 1996 - 2 sessions
February 27, 1997 - 2 sessions
February 28, 1997 - 2 sessions
October 15, 1997 - 2 sessions
October 16, 1997 - 2 sessions
October 22, 1997 - 2 sessions
October 23, 1997 - 2 sessions
November 5, 1997 - 2 sessions
December 4, 1997 - 2 sessions
December 5, 1997 - 2 sessions
December 16, 1997 - 2 sessions

Hearing Locations: NASD Regulation District Office, Boston, MA and the law firm of Burns and Levinson, Boston, MA

CASE SUMMARY

Claimant alleged that two of its former employees, Kirkwood and Taylor, violated Confidentiality Agreements that allegedly prohibited them from retaining, using or disclosing any information about customers, including customer names and addresses. Claimant alleged

that, while they were still employed by Schwab, Kirkwood and Taylor provided confidential information about Claimant's customers to Smith Barney and to Smith Barney's local branch manager, Wellington. Claimant further alleged that after Kirkwood and Taylor resigned from Schwab, Kirkwood, Taylor, Wellington and Smith Barney used Claimant's confidential information to solicit Claimant's customers and customer "leads". Claimant sought compensatory and injunctive relief. In their Answer and Counterclaim, Kirkwood and Taylor denied the material allegations contained in the Statement of Claim and asserted counterclaims against Schwab and Isom, the successor branch manager of Claimant's Hyannis office for defamation and tortious interference with business relations. Respondents Smith Barney and Wellington denied each and every material allegation contained in the Statement of Claim. Schwab and Isom denied each and every material allegation contained in the Counterclaim.

RELIEF REQUESTED

Claimant in the Statement of Claim requested permanent injunctive relief on each claim. Claimant, at the hearing, requested compensatory damages and that these damages be trebled pursuant to Mass.Gen.Laws.c. 93A. Claimant presented alternative theories of recovery. Each theory of recovery was based on Taylor and Kirkwoods' ten year agreement to not "use" client information obtained while they were employed at Claimant. One theory of damages was for compensatory damages at the present value as of December 1997 at \$448,213.51, trebled for a total of \$1,344,640.53. An alternate theory of damages Claimant requested was based on Smith Barney's revenue off these accounts in the amount of \$427,560.00 for ten years for compensatory damages in the amount of \$4,275,600.00, trebled for an award to Claimant in the amount of \$12,826,800. Claimant also sought interest, costs and reasonable attorneys' fees.

Respondents requested that Claimant's claim be denied in its entirety and that Respondents be awarded on their counterclaim and third party claim. Respondents specifically requested that the individual Respondents Form U-5s be amended and filed with NASD and that all costs associated with this matter be assessed against Claimant.

Claimant and Isom requested that Respondents' counterclaim and third party 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 originals remain on file with the NASD Regulation.

AWARD

After considering the pleadings, the testimony, 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 all Respondents are liable to Claimant for the removal from Claimant's computer by Kirkwood and Taylor of over 200 pages containing information with regard to Claimant's current and potential customers, including names, addresses, account numbers, types of accounts, and in some instances, holdings; for delivery of those pages by Kirkwood and Taylor to Wellington and Smith Barney while Kirkwood and Taylor were employees of Claimant; and for the receipt and use of those pages by Wellington and Smith Barney in connection with the preparation and mailing of letters and transfer forms to some of the persons listed on those pages. Absent any evidence to the contrary, the Panel found this conduct to be a breach, by Kirkwood and Taylor, of express and specific language of their Employment Agreements with Claimant, and that the Smith Barney legal department had advance knowledge and approved of this breach.
2. That Respondent Patience L. Taylor is liable and shall pay to Claimant compensatory damages in the amount of \$3,213.00; this amount is exclusive of interest.
3. That Respondent David Kirkwood is liable and shall pay to Claimant compensatory damages in the amount of \$3,466.00; this amount is exclusive of interest.
4. That Respondent John H. Wellington is liable and shall pay to Claimant compensatory damages in the amount of \$4,999.00; this amount is exclusive of interest.
5. That Respondent Smith Barney is liable and shall pay to Claimant compensatory damages in the amount of \$350,000.00; this amount is exclusive of interest.
6. That Respondent Patience L. Taylor is liable and shall pay to Claimant punitive damages in the amount of \$6,426.00. This amount represents punitive damages as proved by Claimant and permitted pursuant to Massachusetts General Laws, c. 93A Section 2 and 11 as cited by Claimant in its Statement of Claim and Claimant's Post-Arbitration Memorandum.
7. That Respondent David Kirkwood is liable and shall pay to Claimant punitive damages in the amount of \$6,932.00. This amount represents punitive damages as proved by Claimant and allowed pursuant to Massachusetts General Laws, c. 93A Section 2 and 11 as cited by Claimant in its Statement of Claim and Claimant's Post-Arbitration Memorandum.

8. That Respondent Smith Barney is liable and shall pay to Claimant punitive damages in the amount of \$700,000.00. This amount represents punitive damages proved by Claimant and permitted pursuant to Massachusetts General Laws, c. 93A Section 2 and 11 as cited by Claimant in its Statement of Claim and Claimant's Post-Arbitration Memorandum.

9. That the parties shall bear their respective attorneys' fees and costs, except as forum fees and costs are specifically addressed below.

10. That in view of the time that has expired, no injunction will issue against Respondents.

11. That Respondents third party claim against Third Party Respondent Vicki Isom is denied in its entirety, and any reference to this matter on the Vicki L. Isom Form U-4 shall be expunged in full.

12. All other claims, counterclaims and third party claims not specifically addressed herein are denied in their entirety.

OTHER COSTS

On June 26, 1997, Respondents requested a postponement and deposited a fee of \$750. This fee shall be retained by NASD Regulation.

On July 16, 1997, Respondents requested a postponement and deposited a fee of \$600. Pursuant to Rule 10319(b) of the Code of Arbitration Procedure ("Code") the costs of a second postponement is twice the initial deposit, but shall not exceed \$1,000. The postponement fee deposit of \$600 is retained and the balance of \$400 for the second postponement request is due.

FORUM FEES

Pursuant to Rule 10205(c) of the Code, the following Forum Fees are assessed.

$(24 \text{ hearing sessions} \times \$1,500) + (1 \text{ pre hearing conference with the full panel} \times \$1,500) + (1 \text{ pre hearing with one arbitrator} \times \$300) = \$37,800$

Charles Schwab's Member Surcharge fee of \$350 remains due and owing.

Smith Barney's Member Surcharge of \$350 is paid.

Forum Fees Assessed: 50% against Claimant and 50% against Smith Barney

Claimant is assessed forum fees in the amount of \$18,900 and shall pay its member surcharge

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fee of \$350; however, these amounts are offset with Claimant's hearing session deposit of \$600 so that the amount due from Claimant is \$18,650.

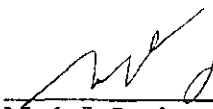
Respondent Smith Barney is assessed forum fees in the amount of \$18,900 and shall pay the outstanding postponement fee of \$400 for a total amount due from Respondent Smith Barney of \$19,300.

Fees are payable to the NASD Regulation, Inc.

DATE AWARD SIGNED:

Concurring Arbitrators' Signatures

3/12/98



Mark J. Levinson, Esq. - Chairperson
Public Arbitrator

Susan F. Drogin, Esq. - Panelist
Public Arbitrator

Lowell A. Warren, Jr. - Panelist
Industry Arbitrator

Date Award Served by NASD Regulation, Inc: March 12, 1998

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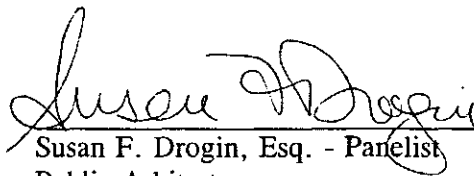
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Public Arbitrator

3/11/98



Susan F. Drogin, Esq. - Panelist
Public Arbitrator

Lowell A. Warren, Jr. - Panelist
Industry Arbitrator

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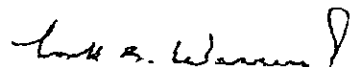
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Public Arbitrator

Susan F. Drogin, Esq. - Panelist
Public Arbitrator

3/5/98



Lowell A. Warren, Jr. - Panelist
Industry Arbitrator

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March 12, 1998