

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Jon Muha

96-04140

Name of Respondent

Smith Barney Inc.

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**REPRESENTATION**

For claimant Jon Muha ("claimant") appeared Scott Michael Hare, Esq. of the law firm Bartony, Hare & Edson located in Pittsburgh, Pennsylvania.

For respondent Smith Barney, Inc. ("respondent") appeared its in-house counsel, Paul K. Barenholtz, Esq., located in New York, New York.

**CASE INFORMATION**

Statement of Claim filed: September 16, 1996.

Claimant's Submission Agreement signed on: September 9, 1996.

Statement of Answer filed by respondent on: November 12, 1996.

Respondent did not file a properly executed Submission Agreement.

**HEARING INFORMATION**

|                         |                |              |
|-------------------------|----------------|--------------|
| Hearing Dates/Sessions: | April 10, 1997 | two sessions |
|                         | April 11, 1997 | two sessions |

The hearings were conducted at the Westin William Penn Hotel located at 530 William Penn Place in Pittsburgh, Pennsylvania.

**CASE SUMMARY**

Claimant alleged that he was employed by respondent as a Registered Sales Assistant from January 20, 1994 to January 20, 1995. Claimant further alleged that he worked primarily as an assistant to Dan Maloney and Jennifer Maloney and was never issued a broker's number.

Claimant also alleged that the trading work he engaged in was conducted under the Maloney's broker numbers. Claimant contended that commencing September 1, 1994, his compensation changed from salary to commission and that he was doing his own sales work not the Maloneys. Claimant further contended that he developed a lead for new business from the refinancing of bonds held by the Municipal Authority of Robinson Township in Allegheny County. Claimant also contended that he drafted a written request, signed by Dan Maloney, and delivered it to the Municipal Authority. Claimant asserted that Smith Barney's representatives attended a meeting regarding the refinancing which led to the submission of a bid and the resulting new business producing a \$300,000.00 fee. Claimant also asserted that Smith Barney pays commissions to its sales representatives and to its employees who alert it to business opportunities but that he has not been paid with relation to the consummated refinancing deal. Claimant alleged that as a result of the above, he has suffered a loss for which the respondent should be held liable.

Respondent maintained that claimant erroneously claims that he is responsible for obtaining certain bond refinancing business for it. Respondent further maintained that claimant was not a finder of the business and did not assist in the preparation of a written proposal to refinance the bonds in question. Respondent also maintained that claimant has no contract with it to get paid in any manner with respect to the bond refinancing and is not otherwise entitled to compensation related to these bonds. Respondent contended that claimant was a registered sales assistant with it, not a broker, and did not do any work for its Municipal Banking Department. Respondent further contended that claimant may have assisted the Maloneys in their efforts to obtain business from municipal entities. Respondent also contended that James Smith of its Municipal Banking Department spoke with claimant prior to the Robinson Township public meeting. Respondent asserted that claimant did not attend the meeting although some of its employees did. Respondent further asserted that following the meeting it made substantial efforts to get the bond business without claimant's participation. Respondent also asserted that as a result of the above, it should not be held liable.

#### **RELIEF REQUESTED**

Claimant requested \$50,000.00 in damages plus interest, attorneys' fees, costs and such other relief as the panel deems appropriate.

Respondent requested that the claims be dismissed in their entirety.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The arbitration panel made the following rulings concerning respondent who did not file a Submission Agreement:

1. Pursuant to Rule 10101 of the NASD Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.

2. The panel found that respondent was a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over respondent pursuant to Rule 10301 of the Code.
3. In view of (2) above, the panel found respondent was required to file with NASD Regulation a properly executed Submission Agreement pursuant to Rule 10314(b) the Code.

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 NASD Regulation.

#### **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. Respondent Smith Barney, Inc. be and hereby is liable and shall pay to claimant Jon Muha \$8,025.00 in damages.
2. Respondent Smith Barney, Inc. be and hereby is liable and shall pay to claimant Jon Muha simple interest at the rate of 6% per annum from December 7, 1995 until April 11, 1997.
3. The parties shall bear their respective attorney's fees and costs.
4. All other relief requests are denied.

#### **FORUM FEES**

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation shall retain the \$500.00 non-refundable filing fee previously deposited by claimant and have assessed the following forum fees:

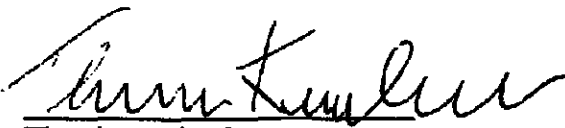
|                                   |                    |
|-----------------------------------|--------------------|
| Four sessions x \$600.00          | = \$2,400.00       |
| minus claimant's \$600.00 deposit | = <u>\$ 600.00</u> |
| total outstanding                 | = \$1,800.00       |

Claimant be and hereby is liable for the sum of \$1,200.00 representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$600.00 with NASD Regulation. Therefore, claimant shall pay \$600.00 to NASD Regulation in satisfaction of outstanding forum fees.

Respondent be and hereby is liable for the sum of \$1,200.00 representing one-half of the total amount of forum fees assessed. Therefore, respondent shall pay to NASD Regulation \$1,200.00 in satisfaction outstanding forum fees.

**ARBITRATORS' SIGNATURES**

I, Theodore Kimelman, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.



Theodore Kimelman  
Industry Chairperson

I, Paul McKenna, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

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Paul McKenna  
Industry Arbitrator

I, Frank Fogl, Jr., Esq., do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

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Frank Fogl, Jr., Esq.  
Industry Arbitrator

Date of Decision: May 30, 1997

Respondent be and hereby is liable for the sum of \$1,200.00 representing one-half of the total amount of forum fees assessed. Therefore, respondent shall pay to NASD Regulation \$1,200.00 in satisfaction outstanding forum fees.

**ARBITRATORS' SIGNATURES**

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Industry Chairperson

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Industry Arbitrator

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Frank Fogl, Jr., Esq.  
Industry Arbitrator

Date of Decision: May 30, 1997

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**ARBITRATORS' SIGNATURES**

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Theodore Kimelman  
Industry Chairperson

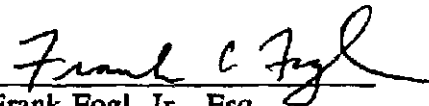
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Frank Fogl, Jr., Esq.  
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Date of Decision: May 30, 1997