

NASD REGULATION, INC. AWARD

Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Doris S. Dana

96-05118

Names of Respondents

Smith Barney, Inc. and William Leach

REPRESENTATION OF PARTIES

For Claimant: Julie E. Fox of the law firm of Ackerman Link & Sartory, West Palm Beach, FL.

For Respondents Smith Barney, Inc. ("SB") and William Leach ("Leach"): Christopher B. O'Malley, Esq. of Smith Barney, Inc., New York, NY.

CASE INFORMATION

Statement of Claim was filed on November 16, 1996. Claimant's Submission Agreement was signed on October 21, 1996.

Statement of Answer was filed by Respondents on April 3, 1997. Submission Agreements were signed on April 3, 1997 on behalf of SB and on July 28, 1997 by Leach.

HEARING INFORMATION

A telephonic pre-hearing conference was held on August 15, 1997, with the full panel presiding.

The evidentiary hearing was held on December 9 and 10, 1997 in Fort Lauderdale, Florida for a total of two sessions.

CASE SUMMARY

Claimant alleged the following: Respondents engaged in unauthorized trading in her account during the time she was out of the country on a three month cruise. Prior to her departure, Leach recommended that Claimant trade options on her Intel and Microsoft stock. Claimant was extremely concerned about losing her stock if the options were called. Leach made misrepresentations and assurances that caused her to agree to permit Leach to enter one such trade while she was away. Upon her return, Claimant discovered that Leach had instead executed numerous transactions while she was away. Although Claimant left a telephone number where she could be reached, Leach never contacted her to obtain authorization to

make the trades. Claimant contended that the breach of duty constituted claims for common law fraud, unsuitability, unauthorized transactions, breach of fiduciary duty, negligence, and failure to supervise.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated the following: At a meeting prior to Claimant leaving on a three month cruise, Claimant gave Leach authorization to trade options on her Newbridge Networks, Compaq Computer, Intel, and Microsoft stock. Claimant voiced a specific concern that these stocks not be called away. To prevent these stocks being called away, Leach discussed "rolling out" the options on Intel and Microsoft, a strategy Claimant had successfully used in the past on her options trades. Claimant gave Leach authorization to "roll out" her options on Microsoft and Intel while she was away. Based on the above, the trades were authorized.

RELIEF REQUESTED

Claimant requested an award of compensatory damages and interest in the amount of \$41,826.00, punitive damages, attorney's fees and costs.

Respondents requested dismissal.

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, Inc. Office of Dispute Resolution.

AWARD

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

1. Respondent Leach is found not liable and, therefore, all claims against him are hereby dismissed.
2. Respondent SB is found liable and shall pay to Claimant the amount of \$5,200.00 inclusive of interest.
3. Claimant's requests for punitive damages and costs are denied. The panel makes no determination with respect to the request for attorney's fees.
4. Respondent SB shall pay to the Claimant the additional sum of \$250.00, representing reimbursement of the nonrefundable filing fee previously made by the Claimant. Respondent

SB shall pay to the Claimant the further sum of \$300.00, representing partial reimbursement of the hearing session deposit previously made by the Claimant.

FORUM FEES

Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure ("Code"), a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four hours or less.

Pursuant to Rule 10332(c) of the Code, the panel has assessed forum fees in the amount of \$1,800.00 (one prehearing conference: \$600.00 plus two hearing sessions x \$600.00 per session).

1. Respondent SB is assessed the sum of \$1,800.00 for which NASD Regulation, Inc. shall retain the \$1,500.00 previously deposited by SB plus \$300.00 of the \$1,500.00 previously deposited by Claimant in full satisfaction thereof. The sum of \$300.00 from the Claimant shall be reimbursed as set forth in the Award section, above.

2. NASD Regulation, Inc. shall retain the nonrefundable filing fee of \$250.00 paid by the Claimant, which shall be reimbursed as set forth in the Award section, above.

Fees are payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/s/

Casey W. Mills, Esq.
Public Arbitrator, Presiding Chair

/s/

Aubie Baltin
Public Arbitrator

/s/

Karen Z. Fischer
Industry Arbitrator

Date of Decision: 2-18-98