

9/11/00

AWARD

NASD Regulation, Incorporated Office of Dispute Resolution

In the Matter of Arbitration Between

Andrew Zuhl and Eloise Zuhl,

Claimants,

and

No. 96-05191

Smith Barney Inc., John Lohrenz, and Carrie B. Morich,

Respondents.

REPRESENTATION OF PARTIES

Claimants, Andrew Zuhl and Eloise Zuhl (hereinafter collectively referred to as "Claimants"), were represented by Paul J. Roshka, Jr., Esquire of Roshka Heyman & DeWulf, located in Phoenix, Arizona.

Respondents, Smith Barney Incorporated, John Lohrenz ("Lohrenz"), and Carrie B. Morich ("Morich") (hereinafter collectively referred to as "Respondents"), were represented by Marion S. Chan, Esquire of Smith Barney Incorporated, located in New York, New York.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about November 19, 1996.

Andrew Zuhl's Submission Agreement was signed on November 18, 1996.

Eloise Zuhl's Submission Agreement was signed on November 18, 1996.

Respondents' Statement of Answer was filed on or about February 7, 1997.

None of Respondents filed executed submission agreements.

HEARING INFORMATION

Pre-hearing conferences were held on: July 29, 1997 for one (1) session; and August 27, 1997 for one (1) session.

The hearing was held on:

September 9, 1997 for two (2) sessions; and
September 10, 1997 for two (2) sessions.

The hearing was held in Phoenix, Arizona.

CASE SUMMARY

Claimants alleged that Respondents are liable for breach of fiduciary duty, negligent misrepresentation, common law fraud, breach of contract, breach of the covenant of good faith and fair dealing, securities fraud, and violations of NASD Rules.

According to Claimants, Respondents made misrepresentations of material facts and recommended unsuitable investments. Claimants asserted that Lohrenz and Morich recommended that they invest in the Vintage fund without disclosing that Vintage was a variable annuity, and after Claimants expressed that they only wanted to invest in another annuity; according to Claimants, they did not want a variable annuity, did not know then, nor know now, what a variable annuity is, and did not realize that they had purchased a Vintage variable annuity until the contract arrived several weeks later. Claimants asserted that Respondents recommended the Hartford annuity as well without disclosing that there was a surrender charge associated with this annuity. Claimants also reported the following problems with the Hartford policy: the owner was listed as the Hartford Multi Broker-Dealer Trust; even though it was to be a ten-year contract, it listed its commencement date as August 22, 2013; and there was no beneficiary named in the event both Claimants passed away. According to Claimants, Respondents claimed that Arizona law forbid Claimants' individual name from being listed as the owner. Claimants asserted that by relying on Respondents' representations that Claimants could increase their return on their money by investing in the Vintage funds, Claimants suffered losses due to the surrender charges and back-end loads when they closed their account. Claimants also asserted that their investment in MFS funds performed poorly, and would not have been made, but for Lohrenz's representations that the Aim Constellation fund would be available in July 1995; according to Claimants, the Aim Constellation fund did not file for registration in Arizona until the middle of December. Claimants further complained that Lohrenz and Morich failed to deliver quarterly statements as promised.

Claimants reported losses of \$2,202.00 on Alliance Technology, \$26,786.00 on Travelers Variable Annuity, \$7,407.00 on the Hartford Annuity, 5.5% interest on \$341,188.97 from the date these funds were received by Respondents until invested, and 5.5% interest on \$82,551.54 from May 22, 1995 until September 15, 1995.

Respondents denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on their part. Respondents stated that they discussed with Claimants at length the distinctions between a fixed and variable annuity. Respondents contended that Claimants were provided with various materials and were involved in lengthy discussions about the Vintage Annuity, which included full disclosure of the structure, advantages, risks and costs of the Vintage Annuity. Respondents also contended that Claimants invested in Alliance Technology against the advice of Respondents. Respondents maintained that all of the alleged misrepresentations are

without merit and that apart from the surrender charges incurred by Claimants' decision to liquidate, the investments were profitable and suitable for Claimants' objectives. Claimants also asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested an award for compensatory damages of \$37,948.98, plus the amount of lost interest on \$341,188.97 after it was received by Respondents until invested, plus interest from the date the account was closed, attorneys' fees, and costs.

Respondents requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents, Smith Barney Incorporated, John Lohrenz, and Carrie B. Morich, did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submissions to arbitration, but are required to submit to arbitration pursuant to § 10301 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted. 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 the NASD Regulation, Incorporated 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:

1. Respondents, Smith Barney Inc., John Lohrenz, and Carrie B. Morich are jointly and severally liable for, and shall pay to Claimants, Andrew Zuhl and Eloise Zuhl the sum of \$3,417.12 as an award of compensatory damages;
2. Respondents, Smith Barney Inc., John Lohrenz, and Carrie B. Morich are jointly and severally liable for, and shall pay to Claimants, Andrew Zuhl and Eloise Zuhl the sum of \$2,500 as an award of attorneys' fees;
3. Other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) pre-hearing conferences x \$300 and there were four (4) hearing sessions x \$400 = \$2,200 in forum fees. Pursuant to § 10332(b) of the NASD 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, the NASD Regulation, Incorporated Office of Dispute Resolution shall retain the non-refundable filing fee of \$120 and shall refund as forum fees the hearing session deposit of \$400 previously deposited with the NASD Regulation, Incorporated Office of Dispute Resolution by Andrew Zuhl and Eloise Zuhl.

Pursuant to § 10333 of the Code, the NASD Regulation, Incorporated Office of Dispute Resolution shall retain the non-refundable member surcharge of \$200 previously deposited with the NASD Regulation, Incorporated Office of Dispute Resolution by Smith Barney.

Additional forum fees in the amount of \$2,200 are assessed by the arbitrators jointly and severally against the Respondents.

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

Concurring Arbitrators' Signatures

Matthew R. Gould
Matthew R. Gould, Esquire
Chairperson
Public Arbitrator

/s/

October 21, 1997
Dated:

Howard S. Baldwin
Howard S. Baldwin
Panelist
Public Arbitrator

/s/

October 21, 1997
Dated:

Daniel B. Skelton
Daniel B. Skelton
Panelist
Industry Arbitrator

/s/

October 27, 1997
Dated: