

NASD Regulation, Inc., Award

In the Matter of Arbitration Between

James M. Letsos, III

Claimant,

and

No. 96-05220

**Smith Barney, Inc.
Commonwealth Associates
and Guy Clemente,**

Respondents.

REPRESENTATION OF PARTIES

Claimant, James N. Letsos, III ("Letsos") was represented by Paul D. Flack, Esq. of Clements O'Neill Pierce & Nickens located in Houston, Texas.

Respondents, Commonwealth Associates ("Commonwealth") and Guy Clemente ("Clemente") were represented by Harry L. Garman, Esquire, Counselor at Law, Inc., located in Fairfield, New Jersey.

CASE INFORMATION

Claimant, Letsos' Statement of Claim was filed on or about December 18, 1996. Claimant, Letsos' Submission Agreement was signed on November 21, 1996.

Respondent Commonwealth's Statement of Answer was filed on or about February 27, 1997. Respondent Commonwealth Associate's Submission Agreement was signed on March 10, 1997 by Commonwealth's Chief Financial Officer, Joseph Wynne. Respondent Clemente's Statement of Answer was filed on or about May 21, 1997. Respondent Clemente's Submission Agreement was signed May 20, 1997.

HEARING INFORMATION

A pre-hearing conference was held on December 16, 1997 for one (1) pre-hearing session.

The hearing was held on: January 22, 1998 for two (2) hearing sessions;
 January 23, 1998 for two (2) hearing sessions;
 March 16, 1998 for two (2) hearing sessions; and
 March 17, 1998 for two (2) hearing sessions.

The hearing was held in Houston, Texas.

CASE SUMMARY

James N. Letsos, III ("Claimant") asserted that due to the mishandling of his account by Respondent, Guy Clemente and the failure of Respondent, Commonwealth Associate to supervise Clemente, he lost well in excess of \$100,000.00, including his entire Individual Retirement Account ("IRA.") After several problems with Clemente as his broker at Smith Barney, Claimant said that although he transferred his account to Commonwealth, he did so only when he was assured that Clemente was closer to the financial markets and could identify investment opportunities which would allow him to recoup the losses he suffered when investing at Smith Barney and that "stops" would be placed on his orders to minimize the risks he would be taking when investing. Claimant stated that not only did Clemente transfer more of his funds from Smith Barney, including his IRA than he allowed, but also that Clemente traded on margin in his account, trading which Claimant expressly denied him permission. For example, Claimant alleged that Clemente at different times bought shares of ORTEL and HAPY on margin for Claimant's account, both of which suffered losses, and that Clemente misrepresented three (3) IPOs, IDTI, TYGN and TALK, with TALK being the only stock enjoying a small profit. Claimant also pointed to Clemente's failure to timely sell shares of HAPY and SFN as requested. Claimant asserted that Respondent, Clemente's and Commonwealth's actions constituted: violations of Texas Securities Laws; federal securities fraud; common law fraud; breach of fiduciary duty; violation of the Texas Business and Commerce Code; negligence and gross negligence; and, breach of contract. As alleged, as the result of Respondent's wrongdoing, Claimant lost valuable opportunities to obtain substantial returns in other investments during the time period of his investments at Commonwealth and that he was forced to pay margin interest and fees that he never should have incurred.

Respondent, Commonwealth Associates denied any wrongdoing as alleged in the Claimants' Statement of Claim. Commonwealth instead contended that all trades were made in accordance with Claimant's investment objectives; that all trades were authorized by the Claimant, who was informed of all facts important to his investment decisions; and that Commonwealth properly handled Claimant's account and engaged in fair dealing at all times relevant. Commonwealth asserted the affirmative defenses of: lack of causation; lack of reliance; the negligence of Claimant, in addition to market forces; the doctrines of ratification, affirmance and waiver; estoppel; assumption of the

risk; and the applicable statute of limitations.

Respondent, Guy Clemente, denied any wrongdoing as alleged in Claimant's Statement of Claim. Clemente stated that at all times, the transactions in Claimant's account were authorized, including the transfer of funds from Smith Barney and the use of margin trading in Claimant's account. Respondent Clemente said that Claimant received account statements, after which Claimant did not act to rectify any problems he had with the transactions he saw on the statements. Clemente denied giving any incorrect stock prices and asserted the following defenses: Respondent Clemente's failure to violate any rules, regulations or applicable laws; failure to state a claim upon which relief may be granted; failure to mitigate damages; the doctrines of ratification, waiver, estoppel and laches; that losses were due to unforeseen market forces; that losses were due to the Claimant's own acts or omissions; and finally, that Claimant is not entitled to punitive damages.

RELIEF REQUESTED

Claimant, James N. Letsos, III requested an award for in excess of \$100,000.00 in actual damages; punitive damages, attorneys fees and costs related to this matter, and any other such relief as the panel deems appropriate.

Respondents, Commonwealth Associates and Guy Clemente, 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

Respondent, Smith Barney, Inc. settled with the Claimant, James N. Letsos, III, on or about December 10, 1997.

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, Inc. Office of Dispute Resolution.

AWARD

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

1. That Respondents, Commonwealth Associates and Guy Clemente are jointly and severally liable for and shall pay to Claimant, James N. Letsos, III, actual damages

in the amount of \$75,000.00;

2. That Respondent, Commonwealth Associates is liable for and shall pay to Claimant, James N. Letsos, III, punitive damages in the amount of \$45,000.00;
3. That Respondent, Guy Clemente is liable for and shall pay to Claimant, James N. Letsos, III, punitive damages in the amount of \$45,000.00;
4. The parties shall bear their own attorneys' fees;
5. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied in their entirety and dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$600.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There was one (1) pre-hearing conference x \$300.00 plus there were eight (8) hearing sessions x \$600.00 = \$5,100.00 in forum fees. Pursuant to Rule 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 Rule 10332(c) of the Code, the NASD Regulation, Inc., Office of Dispute Resolution shall retain the non-refundable filing fee of \$250.00 and shall retain as forum fees the hearing session deposit of \$600.00 previously deposited with the NASD Regulation, Inc., Office of Dispute Resolution by Claimant, James N. Letsos, III. Respondent, Commonwealth Associates is liable for and shall pay to Claimant, James M. Letsos, III \$600.00 as reimbursement of the hearing session deposit. Respondent, Commonwealth Associates is liable for and shall pay the sum of \$4,500.00 to NASD Regulation, Inc. Office of Dispute Resolution.

Pursuant to Rule 10333 of the Code, the NASD Regulation, Inc., Office of Dispute Resolution shall retain the non-refundable member surcharge of \$350.00 previously paid to the NASD Regulation, Inc. Office of Dispute Resolution by Respondent, Commonwealth Associates. Respondent, Smith Barney, Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$350.00 for the member surcharge.

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

Concurring Arbitrators' Signatures:

Michael E. McGown, Esq.
Michael E. McGown, Esq.
Chairperson, Public Arbitrator

May 11, 1998
Date

Charlotte F. Simpson
Charlotte F. Simpson
Panelist, Public Arbitrator

May 26, 1998
Date

Charles E. Martin, CPA
Charles E. Martin, CPA
Panelist, Industry Arbitrator

May 12, 1998
Date

For NASD-use only:
Date served: May 28, 1998