

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Salomon Smith Barney, Inc.

and

99-02108 (cons with 99-02127)

Name of Respondent

Michael G. Willis

Name of Claimant

Michael G. Willis

and

99-02127 (cons with 99-02108)

Name of Respondent

Salomon Smith Barney, Inc.

REPRESENTATION OF PARTIES

Salomon Smith Barney, Inc. ("**Claimant**") was represented by Brent Rychener, Esq. and Richard Nagl, Esq. of Holme Roberts & Owen, LLP, Colorado Springs, Colorado.

Michael G. Willis ("**Respondent**") was represented by Brent T. Johnson, Esq. and Colin Walker, Esq. of Fairfield and Woods, P.C., Denver, Colorado.

CASE INFORMATION

The Statement of Claim in matter 99-02108 was filed on or about May 6, 1999. Salomon Smith Barney's Answer to the Statement of Claim of Michael G. Willis was filed on or about June 28, 1999. Submission Agreement of Claimant Salomon Smith Barney, Inc. was signed on May 5, 1999 by George J. Garro.

Answer to Salomon Smith Barney's Statement of Claim was filed by Respondent Michael G. Willis on or about July 26, 1999. Statement of Claim in matter 99-02127 was filed on or about May 10, 1999. Submission Agreement of Respondent Michael G. Willis was signed on May 7, 1999.

HEARING INFORMATION

A telephone conference call was held on May 13, 1999 for one (1) session with Steve A. Miller, Esq., the then presiding Arbitrator. The hearing was held on Thursday, August 26, 1999 for two (2) sessions in Denver, Colorado for a total of three (3) sessions.

CASE SUMMARY

Claimant alleged that Mr. Willis violated contractual and fiduciary obligations by providing confidential customer records to a competitor prior to leaving Salomon Smith Barney to join the competitor, and by soliciting Salomon Smith Barney customers using confidential customer records.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that when he joined Shearson, he signed a "Financial Consultant Training Contract" with yet another entity, "Shearson Lehman Brothers." Mr. Willis stated that Claimant now is seeking to use the restrictive covenants in the Shearson contract to retain for itself the client base that he built through his own hard work and effort.

RELIEF REQUESTED

Claimant requested an award of unspecified monetary damages, costs and attorneys' fees. At the hearing, Salomon Smith Barney, Inc. requested an award in the amount of \$780,329.00 or \$541,829.00, which represents \$592,000.00 or \$353,000.00 net to Salomon Smith Barney, Inc. for six months lost commissions; \$70,000.00 as a pro rata share of the up-front payment from PaineWebber, Inc.; return of the May 1999 payment in the amount of \$54,000.00 made to Mr. Willis; and \$64,129.00 for costs and attorneys' fees.

Respondent requested that the claims asserted against him be denied in their entirety. Mr. Willis also requested that he be awarded his costs and attorneys' fees.

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 original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution (the "NASD").

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. Michael G. Willis shall be and hereby is liable for and shall pay to Salomon Smith Barney, Inc. the sum of \$54,000.00 (**Fifty Four Thousand Dollars**) as compensatory damages.
2. Michael G. Willis shall be and hereby is liable for and shall pay to Salomon Smith Barney, Inc. the sum of \$70,000.00 (**Seventy Thousand Dollars**) as attorneys' fees and costs.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees specified above.

FORUM FEES

Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were two (2) sessions x \$1,000.00 and one (1) session x \$300.00 = \$2,300.00 in forum fees. Pursuant to Rule 10205(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 10205(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$500.00 and shall **refund** the hearing session deposit in the amount of \$1,000.00 previously deposited with the NASD by Salomon Smith Barney, Inc. in matter 99-02108.

Pursuant to Rule 10205(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$250.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$1,000.00 previously deposited with the NASD by Michael G. Willis in matter 99-02127. Michael G. Willis shall be and hereby is liable for and shall pay to the NASD the sum of \$1,300.00 as the balance due for forum fees.


OTHER FEES


Pursuant to Rule 10205(h) of the Code, Salomon Smith Barney, Inc. has paid to the NASD the \$2,500.00 surcharge for matters filed pursuant to Rule 10335 of the Code in matter 99-02108. Pursuant to Rule 10205(h) of the Code, Michael G. Willis has paid to the NASD the \$2,500.00 surcharge for matters filed pursuant to Rule 10335 of the Code in matter 99-02127.


Pursuant to Rule 10333 of the Code, Salomon Smith Barney, Inc. has paid to the NASD the member surcharge in the amount of \$1,200.00 in matter 99-02108 and the member surcharge in the amount of \$1,200.00 in matter 99-02127 for a total of \$2,400.00 previously invoiced. Pursuant to Rule 10333 of the Code, Salomon Smith Barney, Inc. shall pay to the NASD the past due process fees in

the total amount of \$2,650.00 (\$2,600.00 in matter 99-02108 and \$50.00 in matter 99-02127) previously invoiced. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

Concurring Arbitrators


Reid A. Godbolt, Esq.
Public Arbitrator, Presiding Chair


Steven Meyrich, Esq.
Public Arbitrator


Donald W. Diones
Industry Arbitrator

Dated:

August 26, 1999

August 26, 1999

August 26, 1999