

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Randall M. & Carol L. Swain,
Claimants

vs

Case No. 99-04487

Salomon Smith Barney, Inc.
Theodore A. Buck, Jr.,
Respondents

Hearing Location: Baltimore, Maryland

REPRESENTATION OF PARTIES

Claimants Randall M. Swain, Sr. and Carol L. Swain ("Claimants") were represented by Jonathan A. Azrael, Esq., of the law firm of Azrael, Gann & Franz, LLP, Baltimore, Maryland.

Respondent Salomon Smith Barney, Inc. f/k/a Smith Barney, Inc. ("Salomon Smith Barney") was represented by Christopher B. O'Malley, Esq., Office of the General Counsel of Salomon Smith Barney, Inc., f/k/a Smith Barney, Inc., New York, New York

Respondent Theodore A. Buck, Jr., ("Buck") was represented by Christopher B. O'Malley, Esq., Office of the General Counsel of Salomon Smith Barney, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on September 30, 1999.
Claimants signed the Uniform Submission Agreement on September 27, 1999.

The Statement of Answer was filed by Respondents Salomon Smith Barney and Buck (collectively referred to as "Respondents") on March 27, 2000.
Salomon Smith Barney's Uniform Submission Agreement was executed by Christopher B. O'Malley on March 27, 2000.

Buck did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimants alleged, among other things, the following causes of action: breach of contract, negligence and failure to supervise.

Claimants stated that Buck visited them at their home and induced them to open various accounts with Salomon Smith Barney, promising that he would serve as their financial consultant and work closely with them to plan for their financial needs. Claimants asserted that Buck also told them that their account would be closely monitored by him and by Salomon Smith Barney and that they would be advised on changing market conditions. According to Claimants, Buck told them that he had a buy and sell philosophy of 10-15% on the downside and that Claimants would be immediately notified and advised if any of their positions fell into this range or fell below Claimants' costs.

Claimants stated that, at Buck's request, they transferred 2,000 shares of Wordcruncher Internet Technology Stock to Salomon Smith Barney, but were never provided with copies of the account papers, although they requested them. Claimants stated that on January 26, 1999, they instructed Buck to sell their Wordcruncher stock, which was trading at \$33-\$36 per share. According to Claimants, Buck told them this stock would not be sold as it was "in limbo" and "frozen" during the transfer period between brokers.

On February 16, 1999, Claimants again discussed with Buck the sale of Wordcruncher, which was then trading at about \$26. Buck assured Claimants he would watch the stock and advise them of any changing market conditions. Between February 16 and February 19, 1999, Wordcruncher fell from 15 to 13. Buck did not advise Claimants of the drop. Claimants, relying on Buck's promise to advise them, did not follow Wordcruncher during that time period.

On Monday, February 22, 1999, Claimants tried unsuccessfully to reach Buck. Wanting to avoid further losses, Claimants placed a sell order for 2,000 shares of Wordcruncher which was executed by Salomon Smith Barney on February 22 at \$10.50.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants' Statement of Claim failed to state a claim upon which relief can be based; Claimants' demand for damages is improper as a matter of law and fact as Claimants suffered no damages and therefore failed to state a claim upon which relief can be granted; Respondents did not make any representations, omissions or misstatements with respect to the investments made in the Claimants' account; Claimants are barred from recovery under the doctrines of ratification, estoppel, waiver and laches by reason of their failure to complain promptly after written confirmation slip, monthly account statements and other documents evidencing or setting forth the transactions in Claimants' account; Claimants' claim is barred by Claimants' failure to mitigate any alleged damages; any losses allegedly sustained in Claimants' account were attributable to market conditions and were not attributable to any fault or wrongdoing on the part of Respondents.

RELIEF REQUESTED

Claimants, in their pleading, requested:

Compensatory Damages	\$45,000
Punitive Damages	\$ 5,000
Interest	Amount not specified

Respondents, in their Answer, requested that the Statement of Claim be rejected in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Buck did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the Claim, is bound by the determination of the Arbitrator on all issues submitted.

At the hearing, Claimants made an oral motion to amend the complaint to include attorney's fees. Claimant's motion to amend was granted. Respondents made a Motion for Directed Verdict, which was denied.

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.

AWARD

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

1. That Respondents Salomon Smith Barney and Theodore Buck, jointly and severally, are liable to and shall pay Claimants compensatory damages in the amount of \$15,000; interest is awarded on this amount at the rate of 6% simple interest per annum from January 26, 1999 until the date the Award is paid.
2. That the parties shall bear their own respective cost and fees, including attorneys' fees, except as Fees are specifically addressed below.
3. That any and all claims for relief not specifically addressed herein are denied in their entirety.

FEEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$175
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is Salomon Smith Barney.

Member surcharge	= \$ 800
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$1000

Forum Fees and Assessments

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

1 Pre-hearing session with a single arbitrator x \$450	= \$ 450
October 3, 2000 1 session	
2 Hearing sessions x \$ 450	= \$ 900
January 16, 2001 2 sessions	
Total Forum Fees	= \$1350

The Arbitrator has assessed 100% (\$1350) of the forum fees jointly and severally to Respondents Salomon Smith Barney and Theodore Buck.

Fee Summary

Claimants Randall M. Swain, Sr. and Carol L. Swain are assessed the following fees:

Initial Filing Fee	= \$175
Total Fees	= \$175
<u>Less payments</u>	<u>= \$625</u>
Refund due to Claimants	= \$450

Respondent Salomon Smith Barney is assessed the following fees:

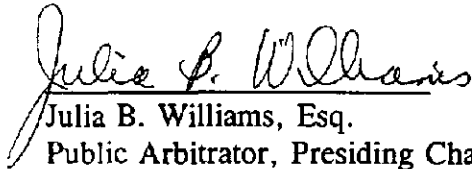
Member Fees	= \$2400
<u>Less payments</u>	<u>= \$2400</u>
Balance due NASD Dispute Resolution	= \$0

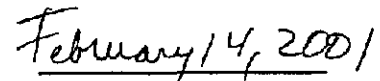
Respondents Salomon Smith Barney and Theodore Buck are jointly and severally liable for:

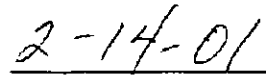
<u>Forum Fees</u>	<u>= \$1350</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1350

All balances are due and payable to NASD Dispute Resolution, Inc.

Arbitrator's Signature


Julia B. Williams, Esq.
Public Arbitrator, Presiding Chairperson


Signature Date


Date of Service (For NASD-DR office use only)