

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Travis Brown

Case Number: 03-01450

Name of the Respondent
Salomon Smith Barney, Inc.

Hearing Site: Washington, D.C.

Nature of the Dispute: Customer v Member.

REPRESENTATION OF PARTIES

Claimant, Travis Brown, hereinafter referred to as "Claimant", was represented by Harry S. Miller, Esq. and Matthew J. Tuttle, Esq., Perkins, Smith & Cohen, LLP, Boston, Massachusetts.

Respondent, Salomon Smith Barney, Inc., hereinafter referred to as "Respondent", was represented by Gilbert Boyce, Esq. and James VanHorn, Esq., Kutak Rock, LLP, Washington, D.C.

CASE INFORMATION

Statement of Claim, entitled "Amended" Statement of Claim, filed on February 25, 2003.

Second Amendment to the Statement of Claim filed on October 8, 2003.

Claimant signed the Uniform Submission Agreement on November 29, 2002.

Statement of Answer to Amended Statement of Claim filed by Respondent on April 28, 2003.

Respondent did not file a Uniform Submission Agreement.

Respondent filed a Motion to Strike Claimant's Second Amended Statement of Claim on October 31, 2003.

Claimant filed an Opposition to Respondent's Motion to Strike Amended Statement of Claim on November 25, 2003.

CASE SUMMARY

Claimant asserted the following causes of action, among others: breach of contract, negligence, failure to supervise, breach of fiduciary duty, misrepresentation, omission of facts, and suitability.

The causes of action relate to the strategy of "exercise and hold" Claimant's WorldCom stock options which was recommended to Claimant by Respondent.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: the Statement of Claim fails to state a claim upon which relief can be granted; the Statement of Claim is barred by the

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doctrines of waiver, estoppel, and laches; statute of limitations; Claimant authorized, accepted and/or ratified each of the transactions in his account; any damages which Claimant incurred were not proximately or legally caused by any act or omission of Respondent; assumption and acceptance of the risk; and, failure to mitigate damages.

RELIEF REQUESTED

Claimant in his Statement of Claim requested compensatory damages of \$3,713,000.00 plus \$400,000.00 in tax liability and unspecified punitive damages, interest, costs, expenses, and attorneys' fees.

Respondent in its Statement of Answer requested that the Statement of Claim be dismissed in its entirety and that the Arbitration Panel (the "Panel") award Respondent attorneys' fees and costs.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

The Panel did not rule on Respondent's Motion to Strike Claimant's Second Amended Statement of Claim.

At the hearing on the merits, Respondent moved for the exclusion from evidence of the Reports of the WorldCom Bankruptcy Examiner Dick Thornburgh. Claimant objected and the Panel denied the motion.

The Panel requested that the parties submit post-hearing submissions concerning attorneys' fees and costs.

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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable to and shall pay to Claimant compensatory damages in the amount of two million dollars (\$2,000,000.00) plus interest at the rate of 6% *per annum* on that amount. Interest shall be calculated on a simple basis and shall accrue from May 31, 2000 through the date the Award is paid in full;
2. Respondent is liable to and shall pay to Claimant punitive damages in the amount of five

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hundred thousand dollars (\$500,000.00). The authority for punitive damages is derived from District of Columbia Code 28-3905.

3. All claims for attorneys' fees are denied in their entirety;
4. The parties shall bear their respective costs, except as Fees are specifically addressed below; and
5. Any and all relief not specifically addressed herein is denied in its entirety.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 600.00
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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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Salomon Smith Barney is a party.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,000.00</u>
Total Member Fees	= \$ 8,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

November 30 – December 3, 2004 adjournment by Respondent	= \$ 1,200.00
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Forum Fees and Assessments

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

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: January 29, 2004 1 session	
Eighteen (18) Hearing sessions @ \$1,200.00	= \$21,600.00
Hearing Dates: January 18, 2005 2 sessions	
January 19, 2005 2 sessions	
January 20, 2005 2 sessions	
January 25, 2005 2 sessions	

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January 26, 2005	2 sessions
January 27, 2005	2 sessions
February 9, 2005	2 sessions
February 10, 2005	2 sessions
February 14, 2005	2 sessions

Total Forum Fees = \$22,800.00

1. The Panel has assessed \$11,400.00 of the forum fees to Claimant.
2. The Panel has assessed \$11,400.00 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Respondent requested copies of tapes = \$ 150.00

FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$11,400.00
Total Fees	= \$12,000.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$10,200.00

2. Respondent is assessed and shall pay the following fees:

Member Fees	= \$ 8,550.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$11,400.00
Administrative Costs	= \$ 150.00
Total Fees	= \$21,150.00
Less payments	= \$ 9,750.00
Balance Due NASD Dispute Resolution	= \$11,400.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Edward A. Dragon, Esq.	-	Public Arbitrator, Presiding Chairperson
Paul A. Yates	-	Public Arbitrator, Panelist
Jane F. Moore	-	Non-Public Arbitrator, Panelist