

**IN ARBITRATION  
UNDER CHAPTER XVIII OF THE RULES  
OF THE CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED**

_____	)	
In The Matter Of	)	
	)	
Customer,*	)	
	)	
Claimant,	)	DECISION
	)	
v.	)	File No. 99NM010
	)	
Frank E. (Pete) Pelton	)	
and Salomon Smith Barney, Inc.,	)	
	)	
Respondents.	)	
_____	)	

**Representation**

For Claimant: Pro se  
For Respondents: John P. Bevilacqua, Salomon Smith Barney Inc.

**Pleadings**

Statement of Claim, filed on or about:	June 1, 1999
Claimant's Submission Agreement, filed on or about:	June 22, 1999
Respondents' Answer and Submission Agreements, filed on or about:	July 12, 1999
Claimant's letter dismissing Mr. Keil as a Respondent, filed on or about:	July 20, 1999

**Hearing**

Pursuant to Chicago Board Options Exchange ("Exchange") Rule 18.4, Simplified Arbitration, the claim was decided by a single public arbitrator knowledgeable in the securities industry solely upon the pleadings and evidence filed by the parties. The named parties had full opportunity to present written arguments and evidence for consideration by the agreed upon public arbitrator.

**Summary of Issues**

Claimant alleges that he lost the full value of 30 June 75 call options on Bank of America (BAC) purchased at the recommendation of his broker, Hank Keil, dismissed by Claimant, and Salomon Smith Barney, Inc. ("Smith Barney"). The claim is for 30 calls bought at \$3 for a total of \$9,185.35. Claimant alleges that the loss was caused by Frank E. (Pete) Pelton ("Pelton") of Smith Barney when Pelton failed to sell the calls at an undisclosed price pursuant to an alleged sell recommendation from the New York office on June 6, 1999. (Smith Barney and Pelton are collectively referred to as "Respondents") The BAC call options were trading at 2 3/8-2 5/8 at some point thereafter. Claimant considered selling then,

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\* Claimant requests confidentiality pursuant to CBOE Rule 18.31.

but decided not to because Smith Barney still had a "hold" recommendation. The expiration was fast approaching, since the call options were June 75 calls.

### **Award\***

After due deliberation and consideration of the pleadings, documentary evidence, and other submissions of the parties, the undersigned arbitrator, in full and final settlement of all issues in controversy, finds as follows:

No explanation is given for why Claimant did not sell the options before expiration other than that Smith Barney apparently continued to recommend a "hold". Claimant acknowledges that he is an "experienced" investor. Claimant further acknowledges that he could have sold the call options at  $2\frac{3}{8}$ – $2\frac{5}{8}$  on some unspecified date in June, but chose not to do so because Smith Barney still had a hold recommendation on the option on that date. Any "hold" recommendation would necessarily have to be evaluated by Claimant predicated upon the purchase price paid and the time to expiration.

Respondents apparently do not contest that they had the authority to sell the call options if the New York office issued a "sell" recommendation. Respondents also apparently do not contest that at some point on June 6, 1997, the New York office of Smith Barney did (or may have) recommended a sell, apparently some time after a telephonic communication in which the recommendation was a continued hold. The price at which the sell was recommended on June 6 or indeed the going price range on that date is not specified by either party. Finally, Respondents also apparently do not contest lack of access to e-mail recommendations from the New York office which, had it existed, would have given Pelton access to any "sell" signal. Since Respondents have not contested these facts, they seem thereby to acknowledge some responsibility for not effecting the sell recommendation which apparently did issue on June 6 in respect to the June 75 BAC options.

On the other hand, Claimant clearly had a duty to mitigate and should have done so at the  $2\frac{3}{8}$ – $2\frac{5}{8}$  price, known by him to have been available at some unspecified date. He made the conscious decision to continue holding the BAC options, rather than mitigate his potential loss, thereby betting on a potential gain although he was and should have been concerned about the option expiring worthless within less than two weeks. Since the decision of whether to sell or not after the apparent "sell" signal on June 6, 1997 was entirely Claimant's, the award is only for the difference between the purchase price and the price that Claimant could have unloaded his investment, assuming a strike price of  $2\frac{1}{2}$ . Hence:

- Respondents shall pay \$1,500 to Claimant, plus forum fees as set forth below.
- Neither interest nor attorney's fees are awarded.
- Each side will bear its own costs.
- Respondents' request for an expungement order with respect to Pelton's Form U-4 is granted.

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\* Pursuant to CBOE Rule 18.31, all monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction.

### Forum Fees

Pursuant to Exchange Rule 18.33, the Arbitrator assesses forum fees in the total amount of \$150.00 (\$75.00 non-refundable filing fee, plus \$75.00 simplified hearing fee) as follows:

1. Responsibility for the forum fees is assessed equally between the parties. Respondents shall pay to Claimant the sum of \$75.00 for fees previously deposited by Claimant.
2. Exchange shall retain the non-refundable filing fee in the amount of \$75.00 and the hearing session deposit in the amount of \$75.00 previously submitted by Claimant.

/s/ Edna Selan Epstein  
Edna Selan Epstein, Public Arbitrator

09/14/1999  
Date