

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

**Juanita H. Horne, by and through Power of Attorney, Etta Jeanine Peek, Claimant**

**v.**

**Salomon Smith Barney, Inc. and William C. Horne, Respondents**

Case Number: 00-04329

Hearing Site: Atlanta, Georgia

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**REPRESENTATION OF PARTIES**

For Claimant:

David A. Kimberley, Esq.  
Cusimano, Keener, Roberts,  
Kimberly & Miles, P.C.  
153 South Ninth Street  
Gadsden, AL 35901

For Respondents:

Luther M. Dorr, Jr., Esq.  
Maynard, Cooper & Gale, P.C.  
1901 Sixth Avenue North  
2400 AmSouth-Harbert Plaza  
Birmingham, AL 35203

**CASE INFORMATION**

Statement of Claim filed: November 2, 2000.

Amendment to Complaint filed: July 10, 2001.

Claimant's Uniform Submission Agreement signed: September 22, 2000.

Statement of Answer filed by Respondents: December 28, 2000.

Statement of Answer to Amended Complaint filed: August 7, 2001.

Respondents did not file executed Uniform Submission Agreements.

**CASE SUMMARY**

Claimant, acting by and through her Power of Attorney (Ms. Peek), alleged that Respondent Horne deceived Claimant, violated the Alabama Securities Act, and breached his fiduciary and regulatory duties to Claimant in allowing the liquidation and removal by Claimant's husband (R. L. Horne) of funds held in an account he maintained with Claimant (his wife), which account was a joint account with rights of survivorship. Claimant alleged that Respondent Salomon Smith Barney, Inc. was liable for the removal of the account funds under theories of respondeat

superior, negligence, breach of contract, and violation of the Alabama Securities Act. Claimant also alleged that Respondent Salomon Smith Barney, Inc. breached various industry rules, regulations and practices, as well as Alabama Code 7-3-110(d) with respect to payment of the check issued to liquidate the account.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested one-half the value of the account as actual damages, \$16,282.23, interest thereon, punitive damages of \$25,000.00 and attorneys' fees and costs.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and that Claimant be assessed forum fees, costs, and a reasonable attorneys' fee.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Arbitrator on all issues submitted.

### **AWARD**

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

The Claimant's Claim is DENIED in its entirety. The Arbitrator has concluded that as an account holder in a joint tenancy account, Claimant bore the risk that her husband, as the other joint tenant, might at any time exercise his lawful right to withdraw any or all of the monies in the account. See, e.g., First Nat. Bank Of Birmingham v. Lawrence, 212 Ala. 45; 101 So. 663 (1924) ("it appears to be generally held that husband and wife may so arrange a joint savings deposit as to be withdrawn in whole or in part by either"). Neither Ms. Peek's pending request that her Power of Attorney over Claimant be recognized by Respondent Salomon Smith Barney, Inc. nor her indication to Respondent Horne that as representative of Claimant, she desired to have the account split and equally divided between the account holders, altered the existing right of R. L. Horne to withdraw all funds from the account when and if he so chose.

The parties shall bear their respective costs, including attorney's fees.

All other relief requested and not expressly granted is denied.

The Arbitrator recommends the expungement of all references to the above captioned arbitration from Respondent William C. Horne's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent William C. Horne must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$175.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Salomon Smith Barney, Inc. is and the following fees are assessed:

Member Surcharge	= \$800.00
Pre-Hearing Process Fee	= \$600.00
<u>Hearing Process Fee</u>	= \$1,000.00
Total Member Fees	= \$2,400.00

#### **Forum Fees and Assessments**

The Arbitrator assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair. The following fees are assessed:

One Pre-hearing conference session with a single arbitrator @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: April 19, 2001	1 session

Two Hearing sessions @ \$450.00/session	= \$ 900.00
Hearing(s): May 14, 2002	2 sessions

<b>Total Forum Fees</b>	<b>= \$ 1,350.00</b>
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1. The Arbitrator assessed \$ 675.00 of the forum fees to Claimant.
2. The Arbitrator assessed \$ 675.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$ 675.00
Total Fees	= \$ 850.00
<u>Less payments</u>	<u>= \$ (775.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 75.00

Respondent Salomon Smith Barney, Inc. is charged with the following fees and costs:

Member Fees	= \$ 2,400.00
Total Fees	= \$ 2,400.00
<u>Less payments</u>	<u>= \$ (2,400.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondents are charged jointly and severally with the following fees and costs:

Forum Fees	= \$675.00
Total Fees	= \$675.00
<u>Less payments</u>	<u>= \$(675.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

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

**ARBITRATOR**

*Robert C. Port*

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*Public, Presiding Chair*

**Arbitrator's Signature**

/S/  
Robert C. Port  
Chair, Public Arbitrator

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Signature Date

June 3, 2002  
Date of service for NASD Dispute Resolution use only