

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Grace M. Peschelt, Individually and as Trustee for the Grace M. Peschelt Fam Rev Trust,
Claimants v. Solomon Smith Barney Inc., Shearson Lehman Hutton and Eugene P. Depatie,
Respondents

Case Number: 01-01493

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimants:

G. Michael Pollock, Esq.
Kramer, Pollock & Pugh LLP
Los Angeles, California

For Respondents:

Etta M. Gumbs, Esq.
Office of General Counsel
Salomon Smith Barney Inc.
New York, New York

CASE INFORMATION

Statement of Claim filed: February 28, 2001

Amended Statement of Claim filed: April 13, 2001

Claimant Grace M. Peschelt's Uniform Submission Agreement signed: February 28, 2001

Joint Statement of Answer filed by Respondents: June 7, 2001

Respondent Salomon Smith Barney Inc.'s Uniform Submission Agreement signed: September 10, 2001

Respondent Eugene P. DePatie's Uniform Submission Agreement signed: September 20, 2001

CASE SUMMARY

Claimant alleged breach of fiduciary duty, negligence, misrepresentation, non-disclosure of material facts, omission of facts, unauthorized trading, churning, manipulations, and unsuitability of investment involving the sale by Respondents to Claimant of shares in a closed end mutual fund entitled ACM and a real estate investment trust known as The Victory Fund.

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Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimants' initial claim requested compensatory damages of \$70,000.00 and punitive damages of \$350,000.00. Claimants' Amended Statement of Claim requested compensatory damages of \$50,000.00.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Claimants amended their statement of claim on April 13, 2001, waiving all damages in excess of \$50,000.00.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

The evidence of record showed that:

- a) Claimant had a cash and non-discretionary account with Respondent firms;
- b) The major, and purportedly objectionable, form of one of the securities was brought to the specific attention of Claimant in the year of purchase as well as, and including other aspects of these securities, in 1992 and 1993;
- c) Claimant received from Respondents required account status information showing her investments and reflecting hundreds of significant monetary transactions over the years.
- d) Claimant also had a qualified tax advisor during the time in question; and,
- e) The securities in questions were purchased in 1989.

The Panel therefore finds that Claimant's claims are barred by applicable statute of limitations and the six year eligibility on submission.

Therefore:

- 1) Claimants' claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

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FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution 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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firms Salomon Smith Barney, Inc. and Shearson Lehman Hutton are parties and the following fees are assessed to each:

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

Adjournment Fees

The following adjournment fees are assessed:

January 24 and 25, 2002 Hearing Dates, jointly requested by the parties, assessed 50% to Claimant Grace M. Peschelt and 50% to Respondents, Solomon Smith Barney Inc., Shearson Lehman Hutton and Eugene P. Depatie jointly and severally	= \$ 450.00
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June 7, 2002 , adjournment requested by Claimant waived by the Panel	= \$ 0.00
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Forum Fees and Assessments

The Panel 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 Panel. The following fees are assessed:

One (1) Pre-hearing conference session @ \$450.00/session	= \$ 450.00
Pre-hearing conference: September 6, 2001 1 session	
Two (2) Hearing sessions @ \$450.00/session	= \$ 900.00
Hearing: June 4, 2002 2 sessions	
Total Forum Fees	= \$1,350.00

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1. The Panel assessed \$675.00 of the forum fees to Claimant Grace M. Peschelt.
2. The Panel assessed \$675.00 of the forum fees jointly and severally to Respondents Soloman Smith Barney Inc., Shearson Lehman Hutton and Eugene P. Depatie, jointly and severally.

Fee Summary

1. Claimant, Grace M. Peschelt, is charged with the following fees and costs:

Initial Filing Fee	= \$ 175.00
Adjournment Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$ 675.00</u>
Total Fees	= \$ 1,075.00
<u>Less payments</u>	<u>= \$(750.00)</u>
Balance Due NASD Dispute Resolution	= \$ 325.00
2. Respondent, Salomon Smith Barney Inc., is charged with the following fees and costs:

Member Fees	= \$ 2,400.00
<u>Less payments</u>	<u>= \$(2,400.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00
3. Respondent, Shearson Lehman Hutton, is charged with the following fees and costs:

Member Fees	= \$ 2,400.00
<u>Less payments</u>	<u>= \$(1,000.00)</u>
Balance Due NASD Dispute Resolution	= \$ 1,400.00
4. Respondents, Soloman Smith Barney Inc., Shearson Lehman Hutton and Eugene P. Depatie, are charged jointly and severally with the following fees and costs:

Adjournment Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$ 675.00</u>
Total Fees	= \$ 900.00
Balance Due NASD Dispute Resolution	= \$ 900.00

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

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ARBITRATION PANEL

Charles E. Rumbaugh, Esq.

Public Arbitrator

Arbitrator's Signature



Charles E. Rumbaugh, Esq.
Public Arbitrator

7/10/02
Signature Date

7/10/02
Date of Service