

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Etta Brenda Brown

Case Number: 02-06195

Name of the Respondents  
Salomon Smith Barney, Inc.  
James Burner  
Keith Burner

Hearing Site: Washington, DC

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Nature of the Dispute: Customer vs. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimant, Etta Brenda Brown, "Claimant", was represented by Wesley L. Clarke, Esq., Law Offices of Wesley L. Clarke, Washington, D.C.

Respondents, Salomon Smith Barney, Inc. ("Smith Barney"), James Burner and Keith Burner, hereinafter collectively referred to as "Respondents", were represented by Alejandro Schwed, Esq., Associate General Counsel for Salomon Smith Barney, Inc., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on October 11, 2002.

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

Statement of Answer filed by Respondents on December 13, 2002.

A representative for Respondent Smith Barney signed the Uniform Submission Agreement on December 13, 2002.

Respondents James Burner and Keith Burner did not file executed Uniform Submission Agreements

**CASE SUMMARY**

Claimant asserted the following causes of action, among others: constructive fraud; breach of fiduciary duty; misrepresentation; failure to supervise; and, violation of federal securities laws, NASD Rules of Fair Practice and NYSE rules. The causes of action relate to purchase of shares in the following mutual funds: MFS MA Investors TR:A, Alliance Growth Fund:B and the MAS FDS: Value:INST.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defense: that Respondents gave the Claimant correct investment advice which she chose to follow only in part.

### **RELIEF REQUESTED**

**Claimant requested:**

Compensatory Damages	\$120,000.00
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified
Other Monetary Relief	amount unspecified:

In their Statement of Answer Respondents requested that the claim be dismissed and that the Arbitration Panel (the "Panel") assess all costs to Claimant.

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

Respondents James Burner and Keith Burner did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

At the hearing Respondent Keith Burner requested that all references to this matter be expunged from his record maintained at the Central Registration Depository ("CRD").

### **AWARD**

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

1. Respondents Smith Barney and James Burner are jointly and severally liable to and shall pay to Claimant the sum of fifty thousand dollars and no cents (\$50,000.00);
2. The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Keith Burner's registration records maintained by CRD, with the understanding that, pursuant to NASD Notice to Members 99-09 and 99-54 Respondent Keith Burner must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;

3. Each party shall bear its own costs and expenses, except as Fees are specified below, and;
4. Any and all relief not specifically addressed herein, including punitive damages, 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 = \$ 300.00

#### **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. Accordingly, Smith Barney is a party.

Member surcharge = \$1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$2,750.00

#### **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 @ \$1,125.00 = \$1,125.00  
Pre-hearing conference: June 23, 2003 1 session

Four (4) Hearing sessions @ \$1,125.00 = \$4,500.00  
Hearing Dates: January 6, 2004 2 sessions  
January 7, 2004 2 sessions

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Total Forum Fees = \$5,625.00

1. The Panel has assessed \$2,812.50 of the forum fees to Claimant.
2. The Panel has assessed \$2,812.50 of the forum fees jointly and severally to Respondents.

#### **Administrative Costs**

Claimant incurred an administrative cost of: = \$ 15.00

**Fee Summary**

1. Claimant is assessed and shall pay:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,812.50
<u>Administrative Cost</u>	= \$ 15.00
Total Fees	= \$ 3,127.50
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 1,702.50

2. Respondent Smith Barney is assessed and shall pay:

<u>Member Fees</u>	= \$ 5,200.00
Total Fees	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 00.00

4. Respondents are jointly and severally assessed:

<u>Forum Fees</u>	= \$2,812.50
Total Fees	= \$2,812.50
<u>Less payments</u>	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$2,812.50

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

**ARBITRATION PANEL**

James P. O'Donnell  
Jane C. Carney, CPA  
Brent D. Berkman, CPA

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

1/27/04

Date of Service (For NASD Dispute Resolution office use only)

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Arbitration No. 02-06195  
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Concurring Arbitrators' Signatures(s)

James P. O'Donnell  
Public Arbitrator, Presiding Chairperson

Signature Date

Jane C. Carney  
Jane C. Carney, CPA  
Public Arbitrator, Panelist

1-20-2004  
Signature Date

Brent D. Berkman, CPA  
Non-Public Arbitrator, Panelist

Signature Date

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James P O'Donnell  
Public Arbitrator, Presiding Chairperson

Signature Date

Jane C. Carney, CPA  
Public Arbitrator, Panelist

Signature Date

Brent D. Berkman  
Brent D. Berkman, CPA  
Non-Public Arbitrator, Panelist

1/27/2004  
Signature Date

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