

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Hale P. Saph III Trust, Hale P. Saph III

93-02844

Name of Respondents

Shearson Lehman Brothers, Inc. n/k/a  
Smith Barney Shearson  
Patrick D. Malzone

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 21, 1993, Claimant Hale P. Saph III, who represented himself, alleged that Respondent Shearson Lehman Brothers, Inc. n/k/a Smith Barney Shearson, through its registered representative, Respondent Patrick D. Malzone, misrepresented the rating of TWA Inc. 17.5% Senior Notes maturing May 15, 1993, and that this investment did not meet his investment objectives and guidelines, which Respondents were aware of, which were preservation of principal and tax free income. Claimant Saph further alleged that although he wrote a letter to the Respondents expressing dissatisfaction with the investment, neither Respondent responded to his letter. The Claimant contended that due to the fraud, breach of fiduciary duty, negligence and breach of contract exhibited by the Respondents, he should be compensated for losses he has incurred.

Respondent Shearson Lehman Brothers, Inc. n/k/a Smith Barney Shearson and Patrick C. Malzone, through its in-house counsel, John P. Bevilacqua, Esq., maintained that Respondent Malzone fully detailed the possible risks and rewards attendant to the purchase of the TWA Notes, and that the Claimant was a sophisticated investor who fully understood the possible risks of this investment, and who also was very thorough in obtaining complete information prior to making the investment. The Respondent contended that they committed no wrong and should not be held liable in this matter.

**RELIEF REQUESTED**

Claimant Hale P. Saph III, Trustee requested \$10,000.00 in actual damages.

Respondents Shearson Lehman Brothers, Inc. n/k/a Smith Barney Shearson and Patrick D. Malzone requested that the claims of the Claimant be dismissed.

**AWARD**

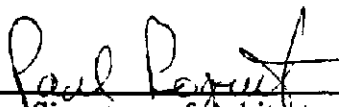
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Paul Roquet, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on July 14, 1993, by the Respondent Patrick D. Malzone on August 31, 1993 and by Respondent Shearson Lehman Brothers, Inc. n/k/a Smith Barney Shearson on September 10, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimant Hale P. Saph III, Trustee, against Respondents Shearson Lehman Brothers, Inc. n/k/a Smith Barney Shearson and Patrick D. Malzone are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **PAUL ROQUET**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
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Signature of Arbitrator

DATE OF DECISION: January 24, 1994