

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimants

Richard E. Cole

93-03840

Name of Respondents

Shearson Lehman Hutton, Inc., n/k/a Smith Barney Shearson Inc.  
Harry L. Moore

---

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 26, 1994, Claimant Richard Cole, who appeared Pro Se, alleged that he had maintained an IRA account with Respondent Smith Barney Shearson Inc. and was convinced by Respondent Harry L. Moore to transfer his funds into the Principal Growth Mortgage Investors Fund Limited Partnership. Claimant further alleged that he thought this investment was a mutual fund, and had he known it was a limited partnership he never would have invested in it. Claimant contended that Respondents Smith Barney Shearson Inc. and Harry L. Moore had a fiduciary responsibility to inform Claimant of the limitations and risks involved with limited partnerships. Claimant further contended that since this information was not given to Claimant before the purchase of the limited partnership, and since a limited partnership is not suitable for an IRA investment, the Respondents should be held liable in this matter.

Respondents Smith Barney Shearson Inc. and Harry L. Moore, through Smith Barney Shearson Inc.'s in-house counsel John P. Bevilacqua, New York, New York, maintained that Claimant authorized the purchase of 800 units of Principal Growth Mortgage Investors Fund, L.P. Series II for a total price of \$8,000.00. Respondents further maintained that the Claimant understood the nature of his investment, since Respondent Harry L. Moore carefully explained to the Claimant the ramifications of investing in the limited partnership in question. Respondents contended that this investment was especially attractive as a long-range IRA

investment since it sought appreciation rather than current income. Respondents further contended that based on Claimant's net worth, Claimant was financially able to withstand any loss that might result from this investment. As a result of the above, Respondents maintained that they should not be held liable in this matter.

### **RELIEF REQUESTED**

Claimant Richard E. Cole requested \$8,000.00 in actual damages, \$1,800.00 in punitive damages and \$200.00 in costs.

Respondents Smith Barney Shearson Inc. and Harry L. Moore requested that the Statement of Claim be dismissed in its entirety.

### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Roland J. Santoni, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on September 17, 1993, by Respondent Smith Barney Shearson Inc. on December 6, 1993, and by Respondent Harry L. Moore on January 10, 1994.

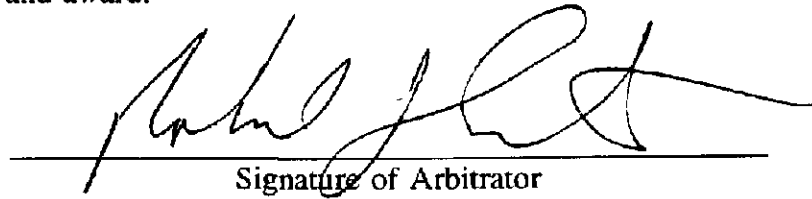
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Claimant Richard E. Cole's claims against Respondents Smith Barney Shearson Inc. and Harry L. Moore 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.

Page Three  
Award 93-03840

**AFFIRMATION**

I, **ROLAND J. SANTONI, ESQ.**, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: May 24, 1994