

**NATIONAL ASSOCIATION OF SECURITIES DEALERS  
AWARD**

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In the Matter of the Arbitration Between

ROBERT K. MATSUMOTO,

Claimant,

v.

NASD No. 93-4157

SMITH BARNEY SHEARSON, INC. and  
GLENN STRAUSS,

Respondents.

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***Representation***

For Claimant: John Allen, Esq. and Dennis Villavicencio, Esq. of Law Offices of John Allen,  
Carlsbad, California

For Respondent: David Bartholomew, Esq. and Lisa Donahue, Esq. of Keesal, Young &  
Logan, Long Beach, California

***Case Information***

Statement of Claim filed: October 7, 1993

Claimant's Submission Agreement signed: October 1, 1993

Statement of Answer filed on: December 27, 1993

Respondents' Submission Agreement signed on: December 27, 1993

***Hearing Information***

Prehearing Conference Date(s)/Sessions: September 12, 1994/one

Posthearing Conference Date(s)/Sessions: November 18/one, 1994, December 19/one, 1994

Hearing Date/Sessions: September 27/two, 28/two, 29/two, 1994

Hearing Location: Los Angeles, California

### *Case Summary*

Claimant alleged:

Violation of Section 10(B) and 20 of the Securities Exchange Act of 1934 and Rule 10B-5 of the Securities Exchange Commission, fraud, deceit and omission of material fact, lack of suitability, intentional and negligent misrepresentation, breach of fiduciary duty and breach of implied covenant of good faith and fair dealing, breach of written contract, violation of New Stock Exchange and National Association of Securities Dealers rules, professional negligence and violation of Chapter 11 of the California Welfare and Institutions Code in the purchase of limited partnerships and mutual fund.

Claimant was a 67 year old retired airline ticket manager at the filing of this claim. His wife was 65 years old and had worked as a homemaker raising three children. Claimant had never previously purchased securities or had a brokerage account. Because of the enormous expense of educating their children at private universities, claimant and his wife were unable to save any money for their retirement and had to completely rely on his retirement benefits for their support. Claimant advised respondents that they needed absolute security from their investments.

Respondents denied each and every allegation of wrongdoing in the Claim and alleged:

Claimant knowingly and voluntarily purchased the investments involved in this case after researching them and thoroughly discussing his investment goals with respondent Glenn Strauss (Strauss). Claimant did not mention that he needed any liquidity other than monthly distributions from his IRA account. Mr. Matsumoto requested that he be provided with a check for \$1,200 each month from his account, but never specified that the amount was only to be taken from earnings. Claimant's account was profitable overall.

All investments conformed to claimant's objectives. He received significant income from the limited partnerships and they have significant present value. Any decline in the value of the investments is due to market conditions that were unforeseeable and beyond respondents' control. Claimant was aware of the risks of limited partnerships and specifically discussed their relative illiquidity with Strauss. Strauss provided claimant with prospectuses for each investment before the purchase. Claimant spoke with Strauss regarding the status of his account and exhibited sophistication and financial acumen beyond that of most investors.

### ***Relief Requested***

Claimant requested:

1. Rescission of all limited partnership interests and return of all funds invested in the approximate amount of \$72,000, amended at the hearing to \$60,000;
2. Return of all commissions, syndication fees, expenses in the approximate amount of \$12,600;
3. Return of all funds lost in the investment in Shearson Managed Government Fund, in the approximate amount of \$10,333;
4. Preaward and postaward interest of approximately \$48,745;
5. Costs of arbitration and expenses;
6. Punitive damages;
7. Such further relief as the panel deems proper.

### ***Other Issues Considered and Decided***

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

Respondents' Motion to Dismiss, briefed by both parties, was denied by the panel after a posthearing conference call on November 18, 1994.

### ***Award***

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

1. Respondents are jointly and severally liable for and shall pay Claimant \$18,500 for losses on the limited partnerships;
2. Each and every other claim is dismissed;
3. The claim for punitive damages is dismissed;
4. The parties shall each bear their respective attorney's fees;
5. The parties shall each bear their respective costs.

### ***Other Costs***

None.

### ***Forum Fees***

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc., shall refund the \$500 hearing session deposit (although the correct hearing deposit was \$750) previously paid by the claimant. Forum fees are assessed against:

Respondents, jointly and severally for \$5,400,

calculated as follows: one prehearing session and two posthearing sessions at \$300/prehearing session, plus six hearing sessions at \$750/hearing session, equals \$5,400.

Fees are payable to the National Association of Securities Dealers, Inc.

### ***Arbitration Panel***

<b><i>Name</i></b>	<b><i>Public/Industry</i></b>
R. James Schaffer	Public
Larry Edmonson	Industry
Michael Burnett	Public

### ***Concurring Arbitrators' Signatures***

\_\_\_\_\_  
R. James Schaffer

\_\_\_\_\_  
Larry Edmonson

  
\_\_\_\_\_  
Michael Burnett

Served 1/5/95

***Date of Decision:*** 12/19/94

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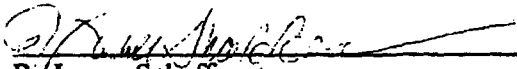
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