

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

C.A. Stief

NASD Arbitration
No. 93-04616

Name of Respondent(s)

Smith Barney Shearson, Inc.
Edward Moran

REPRESENTATION

For Claimant: Bruce R. Safran, Esq., Tarzana, California

For Respondents: Paul K. Barenholtz, Esq., Smith Barney, Inc., New York, New York

CASE INFORMATION

Statement of Claim filed: November 1, 1993

Claimant's Submission Agreement signed: September 2, 1993

Joint Statement of Answer filed by Respondents: February 28, 1994

Respondents' Submission Agreements signed as follows:

Smith Barney Shearson, Inc.: February 28, 1994 and March 23, 1994

Edward Moran: March 1, 1994

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

January 11, 1995 (one session)

January 19, 1995 (one session)

January 26, 1995 (one session)

Hearing Date(s)/Session(s): February 9, 1995 (two sessions)
 February 10, 1995 (one session)
 January 15, 1996 (two sessions)
 January 16, 1996 (two sessions)
 January 17, 1996 (two sessions)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant alleged that Respondent Edward Moran made material misrepresentations concerning the safety, security, and liquidity of Claimant's investments in limited partnerships and stocks and omitted other material facts, in connection with the purchase and sale of the limited partnerships and stocks in Claimant's account. Claimant further alleged the following claims with respect to his investments: 1) Violation of Sections 10(b) and 20 of the Securities Exchange Act of 1934 and Rule 10b-5 of the Securities Exchange Commission; 2) Intentional Misrepresentation and Negligent Misrepresentation; 3) Breach of Fiduciary Duty and Breach of the Implied Covenant of Good Faith and Fair Dealing; 4) Breach of Written Contract; and 5) Violation of New York Stock Exchange, Inc. 342, 401 and 405 Know Your Customer Rules and National Association of Securities Dealers, Inc. (NASD) Rules of Fair Practice, Article III Section 2 Recommendations to Customers.

Respondents denied Claimant's allegations of wrongdoing and alleged that Respondent Moran made no misrepresentation or omission of any material fact to Claimant. Respondents further alleged that Mr. Moran extensively explained the investment proposals first presented to Claimant in early 1988; Mr. Moran provided investment literature, prospectuses and ample opportunity to Claimant to discuss them with him; Claimant invested in a variety of investments in 1988 and thereafter only after considering them at length; the diversified approach utilized in Claimant's account enabled Claimant to receive monthly funds at a rate in excess of his initially requested \$3,000.00 in living expenses per month; and Claimant's capital base remained stable while at Smith Barney. Respondents further alleged that Claimant's complaint appears founded on the misapprehension that his four limited partnership interests, purchased for \$145,000.00 are now worthless; to the contrary, all four partnerships have provided and continue to provide current cash flow for Claimant; and that they represented

a reasonable mix within the Stief portfolio when it was maintained at Smith Barney. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested damages according to proof as follows:

1. For \$145,000.00 which represents Claimant's losses;
2. For punitive damages according to proof;
3. For attorney's fees, interest, costs and disbursements; and
4. For such other and further relief as may be deemed appropriate.

Respondents requested dismissal of Claimant's claims in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On January 19, 1995, the panel of arbitrators reviewed and considered the written and oral positions of the parties relative to Respondents' Motion to Dismiss. The panel denied the Motion.

On or about December 23, 1995, Sanford A. Kahn withdrew as an arbitrator in this matter. Pursuant to the parties' request and in accordance with Section 24 of the NASD Code of Arbitration Procedure, the NASD appointed replacement arbitrator, Joseph J. Aron.

The parties have agreed that the Award in this matter may be executed in either 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.

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 to Claimant the sum of \$29,849.00, in satisfaction of Claimant's claims.

2. Claimant's claim for punitive damages is denied.

3. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

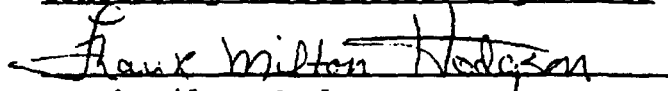
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$750.00 hearing session deposit previously deposited by the Claimant as an offset against the \$750.00 postponement fee assessed against Claimant on or about November 7, 1994. Forum fees are assessed against Respondent Smith Barney Shearson, Inc., solely, in the amount of \$6,900.00, calculated as follows: Three pre-hearing sessions times \$300.00/session plus eight hearing sessions times \$750.00/session. No forum fees are assessed in connection with the session held February 10, 1995.

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Joseph J. Aron, Esq.	Public Arbitrator
Frank Milton Hodgson	Public Arbitrator
John P. McShane	Industry Arbitrator

Concurring Arbitrators' Signatures


Frank Milton Hodgson

John P. McShane

Dissenting Arbitrator

Joseph J. Aron, Esq.

Date of Decision: _____

Date Served: 02/22/96

2. Claimant's claim for punitive damages is denied.

3. The parties shall each bear their respective costs including attorney's fees.

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Dissenting Arbitrator

Joseph J. Aron, Esq.

Date of Decision: 1-17-96

Date Served: 02/22/96