

OFFICE OF DISPUTE RESOLUTION

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In the Matter of the Arbitration Between

Name of Claimant

William P. Wilson

93-04714

Name of Respondent

Smith Barney Shearson, Inc.

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**REPRESENTATION**

For Claimant William P. Wilson ("Claimant") appeared Robert Tofel, Esq. and Jamie Batterman, Esq., of Tofel Berelson P.C. located in New York.

For Respondent Smith Barney Shearson, Inc. ("Respondent") appeared its representative and in-house counsel, Larry H. Irom, Esq.

**CASE INFORMATION**

The Statement of Claim was filed on November 12, 1993. Claimant's Submission Agreement was signed on October 27, 1993.

The Statement of Answer was filed by Respondent on January 31, 1994. Respondent's Submission Agreement was signed on January 31, 1994.

**HEARING INFORMATION**

Pre-Hearing Conference:	October 20, 1994	One Session
Hearing Dates/Sessions:	October 08, 1996	One Session
	November 13, 1996	Two Sessions
	November 15, 1996	One Session
	November 20, 1996	Two Sessions
	December 04, 1996	Two Sessions
	January 13, 1997	Two Sessions
	January 14, 1997	Two Sessions
	February 18, 1997	One Session
	March 27, 1997	Two Sessions
	April 08, 1997	Two Sessions
	April 14, 1997	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York.

### CASE SUMMARY

Claimant stated that in January 1991 he opened a Type 1 cash account with the Respondent and Richard Auslander was his account executive. Claimant stated that at that time he was 70 years old, married and retired, with investment objectives of income, growth, and businessman's risk. Claimant stated that speculation was not his objective because he wanted income and safety in his bond portfolio and businessman's risk in his stock portfolio.

Claimant alleged that on February 14, 1991, Respondent purchased for his account 200,000 First Cap bonds and on February 21, 1991 an additional 250,000 bonds were purchased. Claimant alleged that these bonds were rated by Moody's Bond Record as B-a, which meant that they had speculative elements. Claimant alleged that Respondent knew, and withheld from him, the fact that First Cap had problems in its portfolio pertaining to high risk junk bonds. Claimant stated that on April 02, 1991 another 300,000 First Cap bonds were purchased for his account and 500,000 more on April 26, 1991. Claimant stated that he paid \$15,600.00 accrued interest on these bonds but did not receive this interest because on May 16, 1991 First Cap filed for bankruptcy pursuant to Chapter 11. Claimant stated that in total he purchased \$711,645.00 in bonds plus paid \$15,600 in accrued interest. Claimant alleged that in September 1991, First Cap defaulted on the interest payments. Claimant alleged that the bonds were sold in December 1992 for \$5,808.70 at a loss of \$721,435.30.

Claimant alleged that the acts of the Respondent were made without consulting him, therefore, Respondent violated its fiduciary duty, violated the Securities Laws, its own rules and the rules of various regulatory agencies. Claimant further alleged that Respondent acted in a manner that was illegal, intentional, wrongful, fraudulent, reckless, grossly negligent, failed to supervise his accounts, and made unsuitable transactions.

Claimant also alleged that Respondent purchased bonds in Service America Corp. Claimant alleged that Respondent purchased 500,000 bonds for his account at a cost of \$427,502.50. Claimant alleged that Respondent did not tell him that a portion of the interest on these bonds was paid in-kind not in cash. Claimant stated that in October 1992, Service America Corp. voluntarily filed for bankruptcy. Claimant alleged that at the time Respondent purchased the bonds they were rated by Moody's as C-a which meant that they were speculative and are often in default. Claimant also alleged that the prospectus for the Corporation stated in numerous places that the company was financially unstable and that repayment on the bonds was not guaranteed. Claimant stated that on October 20, 1992, Service America Corp. filed for bankruptcy under Chapter 11 and he lost \$427,502.50 on the bonds. Claimant alleged that Respondent again acted in violation of their fiduciary duty by going against his wishes and purchasing speculative securities.

Respondent maintained that Claimant engaged in trading in high yield bonds ("junk bonds") and speculative securities. Respondent maintained that the purchases of the bonds in the above mentioned companies were the decision of the Claimant. Respondent maintained that Claimant had a history of buying junk bonds such as R.H. Macy and RJR Holdings. Respondent maintained that no transactions took place without the approval of the Claimant and that he was sent a confirmation of each trade and a monthly statement, therefore, no activity could take place without the Claimant's knowledge.

Respondent offered the following affirmative defenses: 1) Claimant had knowledge of and assumed the risks of trading high yield securities any losses sustained were caused by and arose out of such risks; 2) Claimant authorized, consented to or acquiesced in the execution of each transaction complained of and

is estopped from bringing this action; 3) Claimant, by his own conduct, has waived any and all claims alleged in the Statement of Claim; 4) Claimant ratified each and every transaction by failing to timely object to the purchases; and, 5) Claimant is barred from any recovery because he failed to exercise that degree of diligence required in the handling and monitoring of the accounts.

#### **RELIEF REQUESTED**

Claimant requested \$1,148,938.80 with interest, the cost of this arbitration, and reasonable attorney's fees. Claimant renounced the claim for losses on the purchase of First Cap Bonds at the beginning of the arbitration. Claimant's claim was therefore reduced to \$427,502.50.

Respondent requested that the Statement of Claim be dismissed in its entirety.

#### **OTHER ISSUES CONSIDERED & 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 original remains on file with NASD Regulation.

#### **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) The claims of Claimant William P. Wilson's against Respondent Smith Barney Shearson, Inc. are denied in their entirety.
- 2) The parties shall bear their respective costs and attorney's fees.
- 3) All other relief requests are denied.

#### **FORUM FEES**


Pursuant to Rule 10332 of the NASD Regulation, Inc. Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. will retain the \$250.00 non-refundable filing fee previously paid by the Claimant and have assessed the following Forum Fees:

1 Pre-Hearing Session x \$300.00	=	\$ 300.00
19 Hearing Sessions x \$1,000.00	=	<u>\$19,000.00</u>
Total Forum Fees	=	\$19,300.00

The arbitrators have determined that Respondent shall pay 100% of the forum fees assessed. Claimant previously deposited \$1,000.00 with NASD Regulation, Inc., therefore Respondent is hereby liable and shall pay \$18,300.00 to NASD Regulation, Inc. and shall pay Claimant \$1,000.00 as repayment of the hearing session deposit.

**ARBITRATORS' SIGNATURES**

I, George R. Freund, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

  
\_\_\_\_\_  
George R. Freund  
Public Chairperson

I, Stanley M. Ulanoff, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

\_\_\_\_\_  
Stanley M. Ulanoff  
Public Panelist

I, Daniel E. Miller, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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Daniel E. Miller  
Industry Panelist

Date of Decision: August 12, 1997

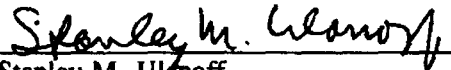
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George R. Freund  
Public Chairperson

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Stanley M. Ulanoff  
Public Panelist

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Daniel E. Miller  
Industry Panelist

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Daniel E. Miller  
Industry Panelist

Date of Decision: August 12, 1997