

***N.A.S.D. AWARD***

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

**Name of Claimant(s)**

John B. Price

NASD Arbitration No. 93-04851

**Name of Respondent(s)**

Smith Barney Shearson, Inc., and David R. Burks

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**REPRESENTATION**

For Claimant: In Propria Persona

For Respondent Smith Barney Shearson, Inc.: Ann Parry, Esq., Vice President,  
Associate General Counsel, Smith Barney Shearson, Inc., New York, New York

For Respondent David R. Burks: No Appearance

**CASE INFORMATION**

Statement of Claim filed: November 15, 1993

Statement of Amended Claim file: October 19, 1994

Statement of Answer filed by Respondent Smith Barney Shearson, Inc.: February  
15, 1994

Statement of Answer filed by Respondent David R. Burks: None

Claimant's Submission Agreement signed: November 17, 1993

Respondent Smith Barney Shearson, Inc.'s Submission Agreement signed: May 26, 1994

Respondent David R. Burks' Submission Agreement signed: None submitted

### **HEARING INFORMATION**

Pre-Hearing Conference: None

Hearing Date(s)/Sessions: December 8, 1994 (One session)

Hearing Location: San Francisco, CA

### **CASE SUMMARY**

Claimant alleged:

Claimant, an inexperienced investor, became associated with respondent David R. Burks and a predecessor of Smith Barney Shearson, Inc. in July 1981, requesting a conservative investment program. Claimant alleges that he suffered losses with respect to investment in MFS Intermediate Income Fund, a closed end government bond fund, because of unsuitability and mismanagement in that too much of his portfolio was invested in that fund.

Respondent Smith Barney Shearson, Inc., alleged:

Respondent Smith Barney Shearson, Inc., denied any liability to claimant, and alleged that claimant's investment in MFS Intermediate Income Fund was not unsuitable and that claimant's portfolio was appropriately balanced.

Respondent David R. Burks did not submit an answer to claimant's claim.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$21,472.

Respondent Smith Barney Shearson, Inc., requested dismissal of claimant's claim.

### **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 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:

Respondents are not responsible for losses suffered by claimant in connection with his investment in MFS Intermediate Income Fund. The claimant's claim is denied. The parties shall each bear their respective attorney's fees and costs.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed:

Forum fees are to be split between the appearing parties and are calculated as follows:

One hearing session at \$400/hearing session, totalling \$400.

Claimant's share of forum fees is \$200 (50% of the cost of the hearing session). Claimant previously paid a hearing session deposit of \$700; therefore, the NASD shall refund to claimant \$500.

Respondent Smith Barney Shearson, Inc.'s share of forum fees is \$200 (50% of the cost of the hearing session).

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

## **ARBITRATORS**

**Name** \_\_\_\_\_ **Public/Industry**

John Smissaert

Public Arbitrator


Peter Brabbe

Public Arbitrator

Robert Schoen

Industry Arbitrator

### **Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
John Smissaert

\_\_\_\_\_  
Peter Brabbe

\_\_\_\_\_  
Robert Schoen

**Date of Decision:** \_\_\_\_\_

**Date Served:** 12/19/94

## **ARBITRATORS**

<u>Name</u>	<u>Public/Industry</u>
John Smissaert	Public Arbitrator
Peter Brabbe	Public Arbitrator
Robert Schoen	Industry Arbitrator

### **Concurring Arbitrators' Signatures**

\_\_\_\_\_  
John Smissaert

*Peter Brabbe*  
Peter Brabbe

\_\_\_\_\_  
Robert Schoen

Date of Decision: \_\_\_\_\_

Date Served: 12/19/94

**ARBITRATORS**

Name \_\_\_\_\_ Public/Industry

John Smissaert

Public Arbitrator

Peter Brabbe

Public Arbitrator

Robert Schoen

Industry Arbitrator

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Date of Decision: \_\_\_\_\_

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