

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Neil A. Maxwell, Sr.

93-04922

Name of Respondent

Smith Barney Shearson, Inc.

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on November 30, 1993, Claimant Neil A. Maxwell, Sr., who appeared Pro Se, alleged that Respondent Smith Barney Shearson, Inc. failed to follow his instructions to transfer an IRA and instead liquidated the IRA without his consent. The Claimant further alleged that the two mis-sold mutual funds, Keystone B-4 and Security Ultra, for which he was waiting for the appropriate time to sell in order to minimize losses, have since recovered, and that the Respondent not only sold him out in flagrant disregard for the interests of a client, it also robbed him of the opportunity to take advantage of significant subsequent gains. The Claimant contended that Respondent Smith Barney Shearson, Inc. has failed to settle this matter to his satisfaction, and therefore he should be compensated for all losses he has suffered due to its wrongdoing.

Respondent Smith Barney Shearson, Inc., through its in-house counsel, Ellen Slipp, Esq., New York, NY, maintained that the Claimant was compensated for the monies he lost as a result of the liquidation of his investment, and that it does not owe him any additional sums. The Respondent also maintained that as an accommodation to its customer, it took responsibility for an account error which was not definitely caused by it, and now the Claimant is seeking to take advantage of the firm's generosity in offering to pay him for the damages caused by an error. Respondent Smith Barney Shearson, Inc. contended that it already compensated the Claimant for the losses he sustained and it does not owe him any other damages.

In a reply to the answer, the Claimant refuted the defenses of the Respondent and reiterated his request for compensation.

**RELIEF REQUESTED**

Claimant Neil A. Maxwell, Sr. requested actual damages of \$10,000.00 (the maximum amount allowable in simplified arbitration), plus \$1,000.00 in costs.

Respondent Smith Barney Shearson, Inc. requested that the claims of the Claimant be dismissed.

**AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Stan West, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on November 22, 1993 and by the Respondent on March 28, 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. The claims of the Claimant Neil A. Maxwell, Sr. against Respondent Smith Barney Shearson, Inc. 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.

**AFFIRMATION**

I, STAN WEST, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



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Signature of Arbitrator

DATE OF DECISION: June 21, 1994