

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimants

Gerald and Kathleen Holland

and

Case # 93-04947

Name of Respondents

Pam McGinley
Carleton Cleveland and
Smith Barney Shearson, Inc.

REPRESENTATION OF PARTIES

Claimants, Gerald and Kathleen Holland, appeared pro se.

For Respondents, Smith Barney Shearson, Inc., Pam McGinley and Carleton Cleveland, Alejandro Schwed, Esq. of Smith Barney Shearson, Inc., New York, NY

CASE INFORMATION

Statement of Claim filed: November 29, 1993.

Claimant, Gerald Holland's, Submission Agreement signed on: March 29, 1993.

Claimant, Kathleen Holland's, Submission Agreement signed on: March 29, 1993.

Respondents' Joint Statement of Answer filed on: February 18, 1994.

Respondent, Smith Barney Shearson, Inc.'s, Submission Agreement signed on: February 18, 1994.

Respondent, Carleton Cleveland's, Submission Agreement signed on: February 17, 1994.

Respondent, Pam McGinley's, Submission Agreement signed on: February 18, 1994.

HEARING INFORMATION

Hearing Sessions/Dates:	Pre-Hearing conference:	November 9, 1994	(1 Session)
	Hearings:	October 17, 1995	(3 Sessions)

Hearing Location: Vista International Hotel
New York, NY

CASE SUMMARY

Claimants alleged that they opened an account at Respondent, Smith Barney Shearson, Inc. ("Smith Barney") with Respondent broker Pam McGinley ("Ms. McGinley") in August 1989 and that upon Ms. McGinley's recommendation Claimants purchased stock in Syntex Corporation ("Syntex"). Claimants alleged that they retained Syntex from August 30, 1989 until February 6, 1992, at which time they sold their investment in Syntex based solely on Ms. McGinley's recommendation.

Claimants further alleged that Ms. McGinley recommended that they sell their shares of Syntex in order to purchase Imclone Systems Inc. ("Imclone") even while Smith Barney's drug analyst continued to recommended Syntex as a buy. Claimant alleged that Ms. McGinley stated that she had "subway information", which Claimant was led to believe was inside information, and that based on these representations Claimants decided to sell Syntex and purchase Imclone. Claimants alleged that on February 6, 1992 they purchased 2500 shares of Imclone and due to its poor performance sold the investment on April 27, 1992 at a loss of \$43,882. In addition, Claimant alleged that the purchase of Imclone was a solicited transaction and denied that it was unsolicited as the Respondents maintain.

Respondents denied the allegations set forth in the Statement of Claim and maintained that Claimants were sophisticated investors in the biotech area who had previously made investments based on information obtained through the work of other brokers. Respondents further maintained that they had simply executed Claimants' investment orders and that Claimants continuously made investments in several biotech companies on the basis of their own ideas and information. Respondents also maintain that Claimants invested in Imclone because it was a highly regarded biotech stock, which was within Claimants' investment strategy and not purchased on inside information.

Respondents maintain that Claimants had attained a large profit in their Syntex position and that Imclone was recommended to the Claimants due to the positive information obtained concerning Imclone. Ms. McGinley denied that she had told Claimants that she had inside information and in addition maintained that she had never heard of the term "subway information" or its meaning.

Respondents maintained that the information relayed to the Claimants was public information that Ms. McGinley received from colleagues at Kidder Peabody, Inc. who had recommended it.

Respondents maintained that Ms. McGinley's recommendation to Claimants to sell their stock is irrelevant, since both Imclone and Syntex severely declined in value after the transaction and that the Claimants would have suffered a loss in either investment. Respondents further maintained that no misrepresentations were made which led Claimants to sell Syntex.

RELIEF REQUESTED

Claimants requested an award in the amount of \$43,882.00

Respondents requested that all claims be denied in their entirety and request an award of costs and attorney's fees incurred in defending this matter..

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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims are hereby denied;
2. All parties shall bear their respective costs, including attorney's fees;
3. Forum fees are to be apportioned equally among Claimants and Respondents, Smith Barney Shearson, Inc. and Pam McGinley.

FORUM FEES

Pursuant to §43(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

Postponement Fee:	\$ 400.00	
Pre-Hearing Conference:	\$ 300.00	(1 Session)
Hearing Sessions:	\$1,200.00	(3 Sessions)
Total Forum Fees:	\$1,900.00	

Claimants are assessed the sum of \$633.33 which represents one-third of the total forum fees due, less the \$400.00 hearing deposit paid, leaving \$233.33 due. Claimants be and hereby are liable and shall pay to the NASD the sum of \$233.33.

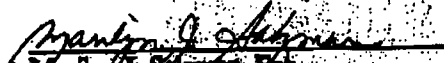
Respondent, Smith Barney Shearson, Inc., is assessed the sum of \$633.33 which represents one-third of the total forum fees due. Smith Barney Shearson, Inc. be and hereby is liable and shall pay to the NASD the sum of \$633.33.

Respondent, Pam McGinley, is assessed the sum of \$633.33 which represents one-third of the total forum fees due. Pam McGinley be and hereby is liable and shall pay to the NASD the sum of \$633.33.

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

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CONCERNING ARBITRATORS


Marilyn J. Salzman, Esq.
Public Arbitrator, Presiding Chair

Romeo J. Barros, Esq.
Public Arbitrator

Thomas Lewis
Industry Arbitrator

Date of Decision: FRY, INC. 11, 1995

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I, Marilyn J. Salzman, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Laws & Rules, that this is my decision in the above captioned matter.

Marilyn J. Salzman
Marilyn J. Salzman, Esq.

I, Romeo J. Barros, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Laws & Rules, that this is my decision in the above captioned matter.

Romeo J. Barros
Romeo J. Barros, Esq.

I, Thomas Lewis, do hereby affirm pursuant to Article 7507 of the Civil Procedure Laws & Rules, that this is my decision in the above captioned matter.

Thomas Lewis
Thomas Lewis

NASD Arbitration No. 93-04947

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CONCURRING ARBITRATORS

Marilyn J. Salzman, Esq.
Public Arbitrator, Presiding Chair

Romeo J. Barros
Romeo J. Barros, Esq.
Public Arbitrator

Thomas Lewis
Industry Arbitrator

Date of Decision: December 12, 1995

NASD Arbitration No. 93-04947

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I, Marilyn J. Salzman, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Laws & Rules, that this is my decision in the above captioned matter.

Marilyn J. Salzman, Esq.

I, Romeo J. Barros, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Laws & Rules, that this is my decision in the above captioned matter.


Romeo J. Barros, Esq.

I, Thomas Levis, do hereby affirm pursuant to Article 7507 of the Civil Procedure Laws & Rules, that this is my decision in the above captioned matter.

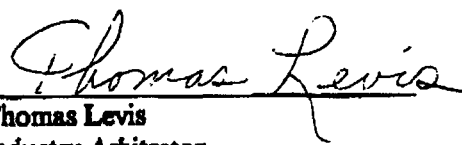
Thomas Levis

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CONCURRING ARBITRATORS

Marilyn J. Salzman, Esq.
Public Arbitrator, Presiding Chair

Romeo J. Barros, Esq.
Public Arbitrator

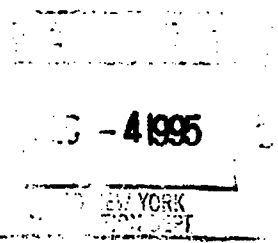


Thomas Levis
Industry Arbitrator

/Execution
Date of Decision: 11/30/95

Date of Decision: December 11, 1995

NASD Arbitration No. 93-04947
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I, **Marilyn J. Salzman, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Laws & Rules, that this is my decision in the above captioned matter.

Marilyn J. Salzman, Esq.

I, **Romeo J. Barros, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Laws & Rules, that this is my decision in the above captioned matter.

Romeo J. Barros, Esq.

I, **Thomas Levis**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Laws & Rules, that this is my decision in the above captioned matter.

Thomas Levis
Thomas Levis