

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

Michael O'Callaghan

NASD Arbitration
No. 93-05015

Name of Respondents

Smith Barney Shearson, Inc.
Lynda Gilbertson

REPRESENTATION

For Claimant: Douglas L. Federspiel, Esq., Velikanje, Moore & Shore; Yakima, Washington

For Respondents: John P. Bevilacqua, Esq., Smith Barney, Inc.; New York, New York

CASE INFORMATION

Statement of Claim filed: December 3, 1993

Claimant's Submission Agreement signed: November 29, 1993

Joint Statement of Answer filed by Respondents: April 5, 1994

Amended Statement of Answer filed by Respondents: January 26, 1995

Respondents' Submission Agreement signed as follows:

Smith Barney Shearson: April 5, 1994

Lynda Gilbertson: March 24, 1994

HEARING INFORMATION

The evidentiary hearing was held in Seattle, Washington, as follows:

February 7, 1995 - 2 sessions

February 8, 1995 - 2 sessions
February 9, 1995 - 2 sessions
February 10, 1995 - 2 sessions

CASE SUMMARY

Claimant alleged unauthorized trading, lack of suitability, churning, misrepresentation, failure to disclose commissions and fraud with respect to the recommendation and purchase of silver commodities futures contracts.

Respondents denied all allegations of wrongdoing, and asserted that Claimant determined to invest in silver commodities futures contracts on an unsolicited basis and requested that Ms. Gilbertson be assigned to his account because of her greater expertise in commodities futures trading. Respondents asserted that Claimant was provided with complete information with respect to the potential risks and rewards of futures contracts, and that Claimant's investments bear out his belief that the price of silver would appreciate, and any losses incurred by Claimant were not caused by the actions of Respondents.

RELIEF REQUESTED

Claimant requested damages of \$150,000, plus interest at 12% per annum, taxable costs and attorney's fees.

Respondents requested dismissal of all claims, and an award of costs of arbitration.

OTHER ISSUES CONSIDERED AND DECIDED

During the course of the hearing, Respondents made three motions to dismiss. Each motion was denied by the panel.

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:

1. Respondents Lynda Gilbertson and Smith Barney are jointly and severally liable for and shall pay to Claimant the sum of \$9,983.00 exactly.

2. In addition, Respondent Smith Barney is solely liable for and shall pay to Claimant the sum of \$39,932.00 exactly.

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 NASD shall retain the \$200 non-refundable filing fee paid by Claimant.

Forum fees are assessed as follows:

Total Fees:		
8 sessions @ \$750 / session	-	\$6,000.00
Claimant's one-half share	-	\$3,000.00
Credit for deposit	-	\$750.00
		<u>\$2,250.00</u>
Respondents' one-half share	-	<u>\$3,000.00</u>

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Frederic E. Dorkin	Public Chairperson
Elwood C. Avery	Public Panelist
William B. Donley	Industry Panelist

Concurring Arbitrators' Signatures

William B. Donley

Served 3/9/95

2. In addition, Respondent Smith Barney is solely liable for and shall pay to Claimant the sum of \$39,932.00 exactly.

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 NASD shall retain the \$200 non-refundable filing fee paid by Claimant.

Forum fees are assessed as follows:

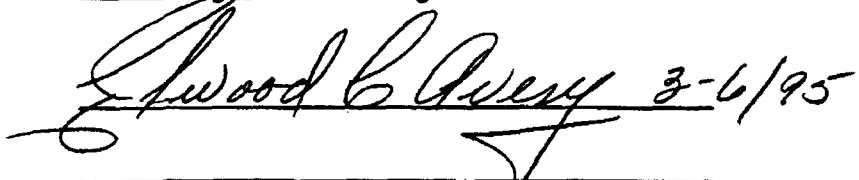
Total Fees:		
8 sessions @ \$750 / session	-	\$6,000.00
Claimant's one-half share	-	\$3,000.00
<u>Credit for deposit</u>	-	<u>\$750.00</u>
		<u>\$2,250.00</u>
Respondents' one-half share	-	<u>\$3,000.00</u>

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Frederic E. Dorkin	Public Chairperson
Elwood C. Avery	Public Panelist
William B. Donley	Industry Panelist

Concurring Arbitrators' Signatures



Served 3/9/95

2. In addition, Respondent Smith Barney is solely liable for and shall pay to Claimant the sum of \$39,932.00 exactly.

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 NASD shall retain the \$200 non-refundable filing fee paid by Claimant.

Forum fees are assessed as follows:


Total Fees:		
8 sessions @ \$750 / session	-	\$6,000.00
Claimant's one-half share	-	\$3,000.00
Credit for deposit	-	\$750.00
		<u>\$2,250.00</u>
Respondents' one-half share	-	<u>\$3,000.00</u>

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Frederic E. Dorkin	Public Chairperson
Elwood C. Avery	Public Panelist
William B. Donley	Industry Panelist

Concurring Arbitrators' Signatures

 2/27/95

Served 3/9/95