

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Glenn and Carmen Guidry

Claimants,

v.

No. 94-00443

Smith Barney Shearson, f/k/a  
Shearson Lehman Brothers

Respondent.

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### **REPRESENTATION OF PARTIES**

Claimants Glenn and Carmen Guidry ("Claimants") were represented by James L. Brazee, Jr., Esq. and Marjorie G. O'Connor, Esq. of Brazee and Associates located in Lafayette, Louisiana. Claimants were previously represented by Timothy K. Reynolds, Esq. of Lafayette, Louisiana.

Respondent Smith Barney Shearson, f/k/a Shearson Lehman Brothers ("Smith Barney") was represented by Stephen M. Kupperman, Esq. of Stone, Pigman, Walther, Wittmann & Hutchinson located in New Orleans, Louisiana. Smith Barney was previously represented by Madelyn Levy, Esq. and William A. Hohauser, Esq. of Smith Barney, Inc. located in New York, New York.

### **CASE INFORMATION**

The Statement of Claim was filed on or about January 20, 1994.

Claimants' Joint Submission Agreement was signed on January 20, 1994.

The Statement of Answer and Counterclaim was filed on or about June 8, 1994.

Claimants' Answer to Counterclaim was filed on or about June 30, 1994.

Respondent's Motion to Dismiss was filed on or about June 9, 1994.

Claimants' Memorandum in Opposition to Motion to Dismiss Due to Release was filed on or about June 30, 1994.

Claimants' Added Memorandum in Opposition to Motion to Dismiss Due to Release was filed on or about August 15, 1994.

Respondent's Reply Memorandum in Further Support of its Motion to Dismiss was filed on or about August 12, 1994.

NASD Regulation, Inc. has no record that Respondent Smith Barney submitted a properly executed Submission Agreement.

### **HEARING INFORMATION**

The hearing was held on:     March 4, 1997 for two (2) sessions;  
   March 5, 1997 for two (2) sessions; and  
   March 6, 1997 for one (1) session.

The hearing location was New Orleans, Louisiana.

### **CASE SUMMARY**

Claimants alleged that: (1) Claimants were inexperienced investors who needed conservative income producing investments, but the stocks they were advised to purchase were uniformly poor performers; (2) Claimants were advised to purchase on margin, but were not clearly advised of the risks of margin; (3) Respondent Smith Barney had no plan for how to cut Claimants' losses should their investments do poorly; and (4) there was little or no diversification in their investments. Claimants contended that Respondent's conduct violated the Suitability Rule of Paragraph 2152 of the NASD Manual. Claimants asserted that they made unsuitable investments through Respondent Smith Barney which included: USX Common Stock; Tultex Common Stock; and Pier 1 Imports Common Stock.

Respondent denied all liability to Claimants in the Statement of Answer and Counterclaim. Respondents contended that Smith Barney cannot be held responsible for the performance of a particular investment or be responsible for changes in the financial market, even though some investments may not perform as well as Claimants wish they had. Respondent asserted that any losses, if any, incurred in Claimants' account were the result of the Claimants' own deliberate and informed course of action coupled with adverse market conditions and not any misconduct by

Respondent or its Financial Consultants. Respondent also maintained that Claimants' claims were barred by a release executed by Claimants on March 4, 1991 and that there has been an accord and satisfaction between the parties.

In the Answer to Counterclaim, Claimants alleged that the injuries claimed in the Statement of Claim arise, generally, after the March 4, 1991 release in which Respondent placed its trust. Claimants contended that the general release releases only those causes of action arising prior to the release.

### **RELIEF REQUESTED**

Claimants requested an award of loss of principal invested in the amount of \$35,313.99, loss of investment opportunity in the amount of \$79,465.00, and an award of attorney fees and costs to be determined at hearing. Claimants also requested that Respondent's Counterclaim be dismissed and that Claimants' expenses and fees in responding to the Counterclaim be assessed against Respondent.

Respondent Smith Barney requested that the Statement of Claim be dismissed in its entirety that its costs and expenses be assessed against Claimants.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent's Motion to Dismiss is hereby denied.

Respondent Smith Barney did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

### **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) That Respondent Smith Barney Shearson, f/k/a Shearson Lehman Brothers is liable for and shall pay to Claimants Glenn and Carmen Guidry compensatory damages in the amount of Twelve Thousand Seven Hundred Fifty Dollars and No Cents (\$12,750.00), plus interest at the Louisiana Legal Rate, which shall begin to accrue on January 20, 1994 and shall continue to accrue until the award is paid in full;
- (2) That Respondent Smith Barney Shearson, f/k/a Shearson Lehman Brothers is liable for and shall pay to Claimants Glenn and Carmen Guidry their attorney fees incurred in this proceeding in the amount of Three Thousand Seven Hundred Seventy Five Dollars and No Cents (\$3,775.00). In deciding to award attorney fees, the panel considered the arguments of the parties and authority cited, and determined that the authority existed for an award of attorney fees;
- (3) That Respondent Smith Barney Shearson, f/k/a Shearson Lehman Brothers is liable for and shall pay to Claimants Glenn and Carmen Guidry their costs incurred in this proceeding in the amount of Three Hundred Seventy Five Dollars and No Cents (\$375.00);
- (4) That the Counterclaim is hereby dismissed in its entirety with prejudice; and
- (5) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby dismissed with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were five (5) hearing sessions x \$750 = \$3,750 in forum fees. Pursuant to §10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall refund the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute

Resolution by the Claimants. Pursuant to §10319(b) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the postponement deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Respondent Smith Barney Shearson, f/k/a Shearson Lehman Brothers.

Pursuant to §10332(c) of the Code, Respondent Smith Barney Shearson, f/k/a Shearson Lehman Brothers is liable for and shall pay forum fees in the amount of \$3,750.

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

**Concurring Arbitrators' Signatures**

\s\ Daniel Eugene Bivins, III  
Daniel Eugene Bivins, III  
Chairperson  
Public Arbitrator

March 14, 1997  
Dated:

\s\ S. David Holladay  
S. David Holladay  
Panelist  
Public Arbitrator

March 14, 1997  
Dated:

\s\ John R. Atchley  
John R. Atchley  
Panelist  
Industry Arbitrator

(Undated)  
Dated:

For NASD Regulation use only:  
Date award served on the parties: March 21, 1997