

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimants

vs.

Name of Respondent

Smith Barney Shearson, Inc.
(formerly known as Shearson Lehman Brothers, Inc.)

REPRESENTATION

For Claimant: Richard J. Annaian, Richard Prevett ("Claimants"), David P. Brauer, Esq. from the law firm of Brauer and Brauer located in Medfield, Massachusetts.

For Respondent: Smith Barney Shearson ("Respondent"), Sean Coughlin, Esq. in-house counsel at Shearson Lehman Brothers located in New York, New York.

CASE INFORMATION

Statement of Claim was filed on March 6, 1994.
Claimants' Submission Agreement was signed by Richard Annaian on April 21, 1994 and by Richard Prevett on April 7, 1994.

Statement of Answer was filed by Respondent, Smith Barney Inc. on June 27, 1994.
Respondent, Smith Barney Inc.'s Submission Agreement was signed on June 17, 1994.

HEARING INFORMATION

Hearing Dates/Sessions: April 18, 1995 - 2 sessions
June 22, 1995 - 2 sessions
July 27, 1995 - 1 session

Hearing Location: In April and June, 1995 at the American Arbitration, 133 Federal Street, 11th Floor, Boston, Massachusetts and in July, 1995, at the NASD offices, 260 Franklin Street, Boston, Massachusetts

CASE SUMMARY

Claimant Annaian alleges that on March 8, 1991, he was approached by Respondent's representative to open an account. Claimant states that he informed Respondent that he was inexperienced, had limited funds to invest and was giving respondent no discretionary authorization. Claimant states that he did knowingly assent to the arbitration clause because he was told not to read the Shearson forms he signed, and did not read them. Claimant states that Respondent's employee, Steve O'Lore, began to trade on his behalf. Claimant further states that Shearson, without his consent, assigned his account to Joseph Marotta. Claimant alleges that Mr. Marotta never spoke with him about his investments objectives. Claimant states that in January, 1992, he received a stock tip to buy 10,000 shares of ABS stock. Claimant only had \$46,000. in his account. Claimant states that he asked Mr. Marotta how he could buy the stock with insufficient funds and Mr. Marotta, along with Mr. Phil Burton, a broker, who said "you just do it" and "we do it all the time." Claimant alleges that Mr. Marotta stated that the deal would take only 3 or 4 days to buy then sell the shares. Claimant also alleges that Mr. Marotta told him to ignore any bills he received for the stock and that at worst, Claimant would have a 90 days restriction placed on his account. Claimant states that as a result of Mr. Marotta's representations, he purchased the stock and the stock then dropped 2 points. Claimant further alleges that he was forced to sell his entire portfolio to cover the ABS stock. Claimant also states that on more than one occasion Mr. Marotta engaged in stock purchases without Claimants permission. Claimant further states that Respondent's actions were fraudulent, deceitful, and in violation of the Uniform Securities Act.

Claimant Prevett alleges that on November 7, 1991, he approached Respondent to open an account and he told Respondents that he was inexperienced and had limited funds for investment. Claimant further states that he was told not to read the paperwork he needed to sign to open his account and did not read them before signing. Claimant states that he was not aware that he assented to the arbitration clause and did not knowingly waive his right to proceed in a court of law. Claimant states that Mr. Marotta, an agent of the Respondent began to engage in trades on the Claimant's behalf and that on January 24, 1992, he received a call from Mr. Marotta's assistant, Sandra Annaian, informing him of the ABS stock tip and that it was a sure thing "and that you can't lose." Claimant states he told Ms. Annaian that he was not in the position to make the \$130,000 investment.

Claimant states that Mr. Marotta joined in the conversation and told Claimant he did not need to put cash up front but could purchase and sell the stock before Shearson would have to be paid for the initial purchase of stock. Claimant states that he initially said no to the deal but the next day when he was called by Annaian and Marotta again and gave in. Claimant states that Annaian and Marotta told him there was "no risk" and that this was a "quick deal." Claimant states that he initially authorized the purchase of 750 shares of ABS, then agreed to the 4,000 purchases. Claimant states that ABS's value declined and he was forced to sell his entire portfolio to pay for the ABS stock. Claimant states that Respondent's actions were fraudulent, intended to deceive the Claimant, and resulted in a breach of the Uniform Securities Act.

Respondent states that the Claimants are longtime friends of the broker who place unsolicited orders with Respondent to purchase ABS. Respondents also states that Claimants are two business men who took a chance on a stock and lost. Respondent further states that at a court ordered deposition Claimant Annaian stated that the unnamed person who "induced" him into signing the papers was his cousin, who worked at Shearson as a secretary. Respondent further states that at Claimant Prevett's examination before trial he admitted that he was not rushed into any decision. Respondent states that the Judge then compelled arbitration, observing claimants' contentions regard arbitration agreement were not credible.

Respondent states that Claimants have shown, in their deposition, that they are willing to alter their stories to keep their claims afloat. Respondent states that Annaian signed an activity letter approving all of Marotta's activity with his account and that claimant Annaian never complained to Shearson, except for this action. Respondent further states that both Claimants indicated their investment goals as "appreciation/risk" and "speculative". Respondents states that Claimants admit that they heard about ABS through Claimants' cousin and girlfriend, Sandra Annaian. Respondent further states that Sandra Annaian had no authority to make representations to a customer, because she was a secretary.

Respondent states that Joseph Marotta flatly denied Claimants' allegations and added that he did not even follow ABS stock and was puzzled as to why Claimants' wanted this stock. Respondent states that Claimants' knew of the risks and acted on their own free will and that Claimant Prevett stated that he was not bound by what a broker told him. Respondent asserts sixteen affirmative defenses.

RELIEF REQUESTED

Claimant Annaian requests an award of \$46,000.00 while Claimant Prevett requests an award of \$15,000.00. Claimants also request an award of punitive damages, interest, costs and attorney's fees.

Respondent requests that the claim be dismissed and that the panel award it costs.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies and have agreed to receive conformed copies of the Award while the original remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' requests for damages are denied. All other claims for relief are denied.

FORUM FEES

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed:

Non-refundable Filing Fee: \$150.00

Hearing Sessions Fee: \$2,500.00 (5 hearing sessions @ \$500.00 per session)

Total Fees: \$2,650.00

- 1) Claimants Annaian and Prevett are each assessed \$883.33 for a total of \$1,766.66. Claimant previously paid \$650.00 and owe a balance of \$1,116.66.
- 2) Respondent is assessed \$883.34 in forum fees.

Fees shall be payable to National Association of Securities Dealers, Inc.

Award No. 94-01024

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ARBITRATION PANEL

Dallas W. Haines, III, Esq.	-	Public Chairperson
Frank G. Kale, Jr.	-	Industry Panelist
David E. Marsan, Esq.	-	Public Panelist

Concurring Arbitrator's Signature

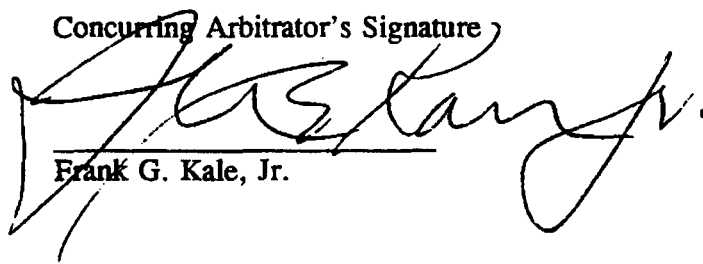

Dallas W. Haines, III, Esq.

NASD Date of Decision: August 30, 1995

ARBITRATION PANEL

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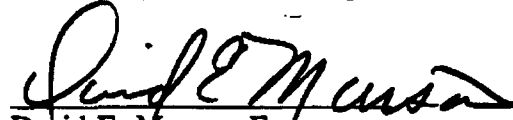
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