

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Shuh-Yueh Simon Hsu

94-01050

Name of Respondent(s)

Smith Barney Shearson, Inc.
n/k/a Smith Barney Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 18, 1994, Claimant Shuh-Yueh Simon Hsu ("Hsu"), who appeared Pro Se, alleged that Respondent Smith Barney Shearson, Inc., n/k/a Smith Barney Inc. ("SB") and/or its predecessor companies erroneously coded his IRA account as non-IRA. Hsu alleged that this issue was not addressed in a prior arbitration brought by Hsu against Respondent SBS in 1989, and that therefore Hsu was entitled to a ruling on the coding issue. Claimant alleged damages stemming from an IRS audit allegedly caused by Respondent's error.

Respondent Smith Barney Shearson Inc., n/k/a Smith Barney Inc., through its in-house counsel, William A. Hohausser, Esq., denied each and every allegation contained in the Statement of Claim and further denied liability of any kind to Claimant Hsu. Respondent SB maintained that Claimant's claims were barred by res judicata, since Claimant Hsu had brought these claims in his original action against Respondents, and further urged dismissal on these grounds and also pursuant to Section 15 of the NASD Code of Arbitration, maintaining that Claimant Hsu's claim was ineligible for arbitration, because the events complained of transpired more than six years prior to the filing of the instant Claim. Respondents maintained that Claimant Hsu was trying to modify the prior arbitration findings, and that therefore, this action should be dismissed.

RELIEF REQUESTED

Claimant Shuh-Yueh Simon Hsu requested that account #513-04024-14 be corrected to reflect the proper coding as an IRA account.

Claimant also requested that his Form 5498 for 1986 and 1987 be corrected to reflect a \$2,000.00 regular contribution and a \$973.44 roll-over contribution for 1986 as well as a \$226.56 regular contribution and \$972.65 roll-over contribution for 1987.

Claimant further requested a reimbursement of \$110.00 that he paid to the IRS as well as \$2,000.00 to compensate for his time in correcting Respondent's errors.

Respondent Smith Barney Inc. requested dismissal of the Claim in its entirety and that it be awarded its costs, including attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

The arbitrator reviewed and considered Motions to Dismiss pursuant to Sections 12(b) and 15 of the NASD Code of Arbitration Procedure filed by Respondent Smith Barney Inc., as well as a Motion to Dismiss pursuant to res judicata. These Motions are hereby denied. All claims are eligible for submission and were considered by the arbitrator.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Alan R. Markizon, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 7, 1994 and by the Respondent on October 14, 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. Respondent Smith Barney Inc. is liable and shall pay to Claimant Shuh-Yueh Simon Hsu \$110.00 in actual damages.
2. Respondent Smith Barney Inc. is liable and shall reclassify Claimant Shuh-Yueh Simon Hsu's account #513-04024-14 as an IRA account.

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3. The \$50.00 filing fee previously deposited with the NASD by the Claimant shall be retained by the NASD. Respondent Smith Barney Inc. is liable and shall pay \$50.00 to the Claimant as reimbursement of the filing fee.

Affirmation

STATE OF

} SS:
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COUNTY OF

I, ALAN R. MARRIZON, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my oath and award.


Signature of Arbitrator

DATE OF DECISION: August 31, 1995

Affirmation

STATE OF

} SS:
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COUNTY OF

I, *Robert L. Smith*, do hereby affirm upon my oath
as arbitrator that I am the individual described in and who executed this instrument,
which is my oath and award.

Robert L. Smith
Signature of Arbitrator

DATE OF DECISION: February 28, 1995