

**N.A.S.D. AWARD****NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

Name of Claimants

Smith Barney Shearson, Inc.;  
Barry Giller

94-01248

Name of Respondents

Prudential Securities, Inc.;  
Christina Lyn Stovall

**REPRESENTATION**

For Claimant: Smith Barney Shearson, Inc. ("Smith Barney") and Barry Giller ("Giller") were represented by Jerome F. Raskas, Esq. and Mark D. Sadow, Esq. of Raskas, Ruttmeyer, Pomerantz, Wynne, Garavaglia & Susman, located in St. Louis, Missouri.

For Respondent: Prudential Securities, Inc. ("Prudential") and Christina Lyn Stovall ("Stovall") were represented by Jeffrey T. Demerath, Esq. of Greensfelder, Hemker & Gale, P.C., located in St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed: April 5, 1994.

Claimant Smith Barney's Submission Agreement signed on: March 31, 1994 by Ronald Dippel, First Vice President, Smith Barney Shearson, Inc.

Claimant Giller's Submission Agreement signed on: March 31, 1994.

Statement of Answer filed by Respondents on: April 28, 1994.

Respondent Prudential's Submission Agreement signed on: April 26, 1994 by Jeffrey T. Demerath.

Respondent Stovall's Submission Agreement signed on: April 26, 1994.

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### HEARING INFORMATION

Pre-Hearing Conference: None Held.  
Hearing Date/Sessions: June 22, 1994 for Two (2) sessions.  
Hearing Location: St. Louis, Missouri.

### CASE SUMMARY

Claimants Smith Barney and Giller alleged that Respondent Stovall, a former employee, breached a Confidentiality Agreement and her common law contract of employment by misappropriating confidential information regarding Claimants' clients and that Respondent Prudential used this information to interfere with the Claimants' relationship with these clients. The Claimants' specifically alleged that:

1. On or about July 25, 1988, Stovall entered into the employment of Shearson Lehman Hutton, Inc., now known as Smith Barney Shearson, Inc., and entered into a "Confidentiality Agreement". This agreement provided that the information Stovall learned as a result of her employment at Shearson was confidential, and that all documents relating to the clients of Shearson are confidential and must be returned to Shearson upon termination of her employment;
2. Stovall became Giller's sales assistant on July 22, 1991. Giller entrusted Stovall with confidential client information and Stovall gained intimate knowledge of Giller's clients financial goals, investment patterns and trading history;
3. On or about March 11, 1994, Stovall voluntarily terminated her employment with Smith Barney and began working at Prudential, using misappropriated documents and information about Claimants' clients to contact these clients directly and solicit their investment business on behalf of Respondents; and
4. Prudential, through Stovall, knew or should have known of Claimants' reasonable business expectation in the continued loyalty and business of its customers. The Respondents use of the confidential information threatened to interfere with Claimants' reasonable business expectancies.

Respondents denied the material allegations of the Statement of Claim, asserting that:

1. The agreement signed by Stovall did not prohibit, nor could it prohibit, Stovall

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from using her knowledge of the identities of Claimants' clients in her new employment. These client identities are not "confidential information" as that term is used in the agreement;

2. Copies of certain monthly statements Stovall took from Smith Barney were returned on March 24, 1994 and Stovall did not use any confidential information in the statements in her employment with Prudential; and

3. The only other document taken by Stovall from Smith Barney was her list of names and addresses of a limited number of Smith Barney's clients compiled openly and in full view at Smith Barney. This list was derived from holding page books and Stovall's Rolodex which remained at Smith Barney.

In addition, Respondents asserted several affirmative defenses, including the following:

1. The Claim fails to state a cause of action upon which relief may be granted;
2. The claims are barred by the doctrines of estoppel, waiver and unclean hands;
3. Claimants are attempting to prohibit Stovall from competing with them when no agreement was entered into by the parties prohibiting such competition;
4. Claimants cannot prohibit Stovall from using general information obtained while employed by Claimants and which resides with her as part of her general knowledge, memory, skill and experience gained during her employment;
5. Stovall's position as sales assistant should not allow her to exert greater influence over Giller's clients than Giller himself exerted;
6. There has been no violation of the agreement entered into by Stovall, the agreement should be strictly construed against the party drafting it, and the parties were in unequal bargaining positions when the agreement was signed; and
7. Claimants have not suffered either irreparable injury or substantial harm.

#### RELIEF REQUESTED

Claimants requested that an award be entered: 1) enjoining the Respondents from soliciting or accepting any investment business of any of the Claimants' clients whom Stovall served in her employment with Claimants and would not have learned of, but for her relationship and the

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confidential information developed between Giller and his clients; 2) ordering Respondents to return immediately to Claimants any written records of Claimants in their possession or control; 3) awarding the Claimants their costs, interest and actual damages in such reasonable sum as the Panel finds due; 4) awarding punitive damages in an amount sufficient to punish Prudential and deter it and other broker dealers from engaging in similar unlawful conduct; 5) awarding a reasonable amount for Claimants' attorneys' fees; and 6) for whatever additional orders the Panel deemed appropriate.

Respondents requested that the Statement of Claim be dismissed with prejudice in all respects and that any and all relief requests be denied; that Respondents be awarded their costs and expenses incurred in defending against this claim, including reasonable attorneys' fees incurred; and for such further relief as may be deemed appropriate.

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

Pursuant to Section 44(h) of the NASD Code of Arbitration Procedure, the parties requested and received an expedited hearing.

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 originals remain on file with the NASD.

#### **AWARD**

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

1. On the claim for Count I, the arbitrators find for the Claimants, Smith Barney Shearson, Inc. and Barry Giller;
2. On the claim for Count II, the arbitrators find for the Claimants, Smith Barney Shearson, Inc. and Barry Giller;
3. On the claim that the information or material prepared or compiled by Respondent Stovall is confidential information, the arbitrators find for the Respondents, Prudential Securities Incorporated and Christina Lyn Stovall;
4. The arbitrators order that Respondents Prudential Securities Incorporated and

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Christina Lyn Stovall are hereby restrained from directly or indirectly, alone or in concert with others from using in the solicitation of any customers of Claimants any of Claimants' customers' confirmations of trades, monthly statements, account information forms, new account forms, holding pages, summaries of trading for the customers of Claimants (including monthly and quarterly summaries) and any other written documentation of Claimants reflecting the trading history or activity of the customers of Claimant Giller;

5. The arbitrators order that Respondents Prudential Securities Incorporated and Christina Lyn Stovall are prohibited for a period of 60 days from soliciting customers of Claimants with the use of any other information or material prepared or compiled by Respondent Stovall and further that Respondents Prudential Securities Incorporated and Christina Lyn Stovall have the burden of showing that any transfer of a customer account from Claimants during this 60-day period was not solicited with the use of information or material set forth in this paragraph 5;

6. The arbitrators find that the demand of Claimants to require Respondents to immediately return to Claimants any originals and copies of any written or computerized records of Claimants in their possession or control that Stovall appropriated from Claimants is moot as all such materials have been returned;

7. The claim for costs, interest, damages and attorneys' fees is denied;

8. The claim for punitive damages is denied;

9. Each party shall bear their respective costs of this action, including attorney's fees, except for those enumerated herein; and

10. Any relief request not specifically granted is hereby denied.

#### OTHER COSTS

Pursuant to Section 44(h) of the NASD Code of Arbitration Procedure, the parties each paid a non-refundable surcharge of \$2,500.00 to the NASD for an expedited hearing. The NASD shall retain the surcharge paid by the parties.

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### **FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) hearing sessions x \$600.00 per session = \$1,200.00.

The National Association of Securities Dealers, Inc. shall retain the \$250.00 claim filing fee and the \$600.00 hearing session deposit previously deposited by the Claimants, Smith Barney Shearson, Inc. and Barry Giller. Respondents Prudential Securities Incorporated and Christina Lyn Stovall are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$600.00.

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

#### **Concurring Arbitrators' Signatures**

Name

Date

/s/John Fox Arnold, Esq.  
John Fox Arnold, Esq.  
Industry Arbitrator  
Chairperson

July 18, 1994

/s/Raymond Allen Moore  
Raymond Allen Moore  
Industry Arbitrator

July 18, 1994

/s/Richard L. Johannesman  
Richard L. Johannesman  
Industry Arbitrator

July 18, 1994

For NASD Use Only

Date of Service of Award: 7-26-94