

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

F. Sears Harris

and

94-01901

Name of Respondent

Smith Barney Shearson, Inc.

REPRESENTATION OF PARTIES

F. Sears Harris ("Claimant") was represented by Michael A. Meyer, Esq., Sidwell & Barrett, P.C., Franklin, TN.

Smith Barney Shearson, Inc. ("Respondent") was represented by William A. Hohauser, Esq., Smith Barney Shearson, Inc., New York, NY

CASE INFORMATION

The Statement of Claim was filed on or about May 20, 1994. Amendment to Statement of Claim was filed on or about May 1, 1995. Submission Agreement of Claimant F. Sears Harris was signed on March 22, 1994.

Statement of Answer was filed by Respondent Smith Barney Shearson, Inc. on or about July 20, 1994. Submission Agreement of Respondent Smith Barney Shearson, Inc. was signed on August 5, 1994 by William A. Hohauser.

HEARING INFORMATION

The hearing was held on May 9, 1995 for two (2) sessions and May 10, 1995 for one (1) session in Nashville, Tennessee for a total of three (3) sessions.

CASE SUMMARY

Claimant alleged that violations of §10b of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and breach of fiduciary duty under the common law of the State of Tennessee. In the

Amendment to the Statement of Claim, the allegations of violations of §10b of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder were withdrawn. Specifically, Claimant alleged that Terry Brandon, an employee of Respondent Smith Barney Shearson, exercised control over an account which Claimant established for his Keogh Plan. Claimant alleged that Brandon employed a trading strategy intended to enrich himself through sales commissions and contrary to or otherwise in disregard for the Claimant's best interests.

Respondent denied the allegations set forth in the Statement of Claim. Respondents specifically stated the Claimant and Mr. Brandon are neighbors and good friends. Respondents stated that Mr. Harris had been a client of Mr. Brandon for approximately thirteen years. Respondent further stated that Mr. Harris had been advised to open a managed account, but that the Claimant's account did not meet the minimum amounts required to open a managed account. It was stated that Mr. Brandon then began making recommendations to Mr. Harris based upon the recommended lists provided by Shearson Lehman Brothers. Respondent stated that the two men would discuss the loss parameters that the Claimant was willing to accept and that when appropriate stop-loss orders would be placed.

RELIEF REQUESTED

Claimant requested an award in the amount of \$50,000 or such other amount as proven at the hearing of this matter, punitive damages, and general relief.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its' costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. 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. All claims asserted in this matter shall be and hereby are denied and dismissed in their entirety.
2. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There were three (3) sessions x \$400 = \$1,200 in forum fees. Pursuant to §43(b) 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 §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$120 and shall **retain** as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD by the Claimant F. Sears Harris. Pursuant to §45 of the NASD Code of Arbitration Procedure, the NASD shall **retain** the \$200 surcharge previously paid by Respondent Smith Barney Shearson. Claimant F. Sears Harris shall be and hereby is liable for and shall pay to the NASD the sum of \$200 and Respondent Smith Barney Shearson shall be and hereby is liable for and shall pay to the NASD the sum of \$600 as the balance due for forum fees. **Fees are payable to the National Association of Securities Dealers, Inc.**

Dated: 2

/s/ Joe P. Lane, Esq.

Joe P. Lane, Esq.

Public Arbitrator, Presiding Chair

May 31, 1995

/s/ Lee Cowen

Lee Cowen

Public Arbitrator

May 31, 1995

/s/ Allen S. Bjork

Allen S. Bjork

Industry Arbitrator

May 31, 1995