

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

William A. Lake

94-01903

Name of Respondent(s)

Smith Barney Shearson, Inc.  
Gregory A. Thompson

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on May 20, 1994, Claimant William A. Lake, through his representative, Robert M. Roth, of R.M. Roth and Associates, Appleton, WI, alleged that Respondents Gregory A. Thompson ("Thompson") and Smith Barney Shearson ("SBS") sold him unsuitable securities, made misrepresentations, and breached their fiduciary duty to him. Claimant further alleged that Thompson recommended an investment in First Capital Income and Growth 12, a high risk, speculative and illiquid investment that was in complete opposition to Claimant's requirements for conservative investments. Claimant contended that the nature of the investment was not disclosed to him and Claimant did not realize the nature or the substantial decline in value until recently. Claimant contended that Respondent should be held liable for his loss.

Respondents, Gregory A. Thompson and Smith Barney Shearson, through their representative, Douglas C. Wurth, Esq. in-house counsel for Respondent Smith Barney Shearson, maintained that at the time of the purchase of First Capital, Claimant had represented to Respondents that he had a net worth and annual income that satisfied the eligibility standards articulated in the prospectus. Respondents further maintained that claimant, who had received a prospectus, was well aware of the risks and characteristics of the limited partnership. Respondents contended that the investment strategy was designed to achieve Claimant's twin goals of income and growth and they should not be held liable for Claimant's loss.

**RELIEF REQUESTED**

Claimant William A. Lake, requested rescission of the investment and return of his \$10,000.00 plus interest and costs.

Respondents, Gregory A. Thompson and Smith Barney Shearson, requested that the claims of the Claimant be dismissed.

**AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Donald H. Fidler, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 9, 1994. Respondents did not submit Submission Agreements.

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. Respondents Gregory A. Thompson and Smith Barney Shearson are jointly and severally liable and shall pay to Claimant William A. Lake \$10,000.00 in actual damages.
2. Claimant William A. Lake shall convey his entire interest in First Capital Income and Growth 12 Limited Partnership to Respondent Smith Barney Shearson.
3. The parties shall bear their respective costs.

The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant William A. Lake, shall be retained by the NASD, Inc. Respondents Gregory A. Thompson and Smith Barney Shearson are jointly and severally liable and shall pay to Claimant \$150.00 as reimbursement of the filing fee.

Affirmation

STATE OF

} SS:  
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COUNTY OF

I, DONALD H. FIDLER, 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:

May 3, 1995