

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Elden Farm  
Ivan and Lellah Harris  
Dean Marler and Bernice Marler  
John and Gwendolyn Wilson  
Edward Kobe and Norma Kobe  
Richard and Janice Moon  
Charles and Beatrice Baldridge  
Bill and Mary Hart  
Sharon Kent  
Wes L. Clark  
Bernadeen Dowd and Barbara Mahoney  
Denzil and Traci Rogers  
Paul and Susan Paduano

NASD Arbitration

Nos. 94-01662, 94-01688  
94-01689, 94-01692  
94-01693, 94-01729  
94-01730, 94-01802  
94-01955, 94-02131  
94-02186, 94-02415  
94-03661

Consolidated  
Cases

Name of Respondent(s)

Smith Barney Shearson Inc.  
Kiel VanInwegen  
John Sullivan

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**REPRESENTATION**

For Claimants: Jeffrey A. Thomson, Esq., Elam & Burke, Boise, Idaho

For Respondents: Ann Parry, Esq., Smith Barney Inc., New York, New York

**CASE INFORMATION 94-01662 (Farm)**

Statement of Claim filed: May 3, 1994

Claimant's Submission Agreement signed: April 29, 1994

Joint Statement of Answer filed by Respondents: September 19, 1994

Respondents' Submission Agreements signed as follows:

Kiel VanInwegen: October 4, 1994

John Sullivan: October 5, 1994

**CASE INFORMATION 94-01688 (Harris)**

Statement of Claim filed: May 5, 1994

Claimants' Submission Agreements signed: May 2, 1994 and July 11, 1994

Joint Statement of Answer filed by Respondents: September 20, 1994

Respondents' Submission Agreements signed as follows:

Kiel VanInwegen: October 4, 1994

John Sullivan: October 5, 1994

**CASE INFORMATION 94-01689 (Marler)**

Statement of Claim filed: May 5, 1994

Supplement to Statement of Claim filed: July 26, 1994

Claimants' Submission Agreement signed: May 2, 1994

Joint Statement of Answer filed by Respondents: September 20, 1994

Respondents' Submission Agreements signed as follows:

Smith Barney Inc. (also known as Smith Barney Shearson Inc.):  
September 28, 1994

Kiel VanInwegen: October 4, 1994

John Sullivan: October 5, 1994

CASE INFORMATION 94-01692 (Wilson)

Statement of Claim filed: May 5, 1994

Claimants' Submission Agreement signed: May 2, 1994

Joint Statement of Answer filed by Respondents: September 23, 1994

Respondents' Submission Agreements signed as follows:

Smith Barney Inc.: September 28, 1994

Kiel VanInwegen: October 4, 1994

John Sullivan: October 5, 1994

CASE INFORMATION 94-01693 (Kobe)

Statement of Claim filed: May 5, 1994

Claimants' Submission Agreement signed: May 2, 1994

Joint Statement of Answer filed by Respondents: June 20, 1994

Respondents' Submission Agreements signed as follows:

Kiel VanInwegen: October 4, 1994

John Sullivan: October 5, 1994

CASE INFORMATION 94-01729 (Moon)

Statement of Claim filed: May 4, 1994

Claimants' Submission Agreement signed: May 4, 1994

Joint Statement of Answer filed by Respondents: September 22, 1994

Respondents' Submission Agreements signed as follows:

Smith Barney Inc.: September 28, 1994

Cornelius VanInwegen (also known as Kiel VanInwegen: October 4, 1994

John Sullivan: October 5, 1994

CASE INFORMATION 94-01730 (Baldridge)

Statement of Claim filed: May 9, 1994

Claimants' Submission Agreement signed: April 30, 1994

Joint Statement of Answer filed by Respondents: June 23, 1994

Amended Statement of Answer filed by Respondents: December 29, 1994

Respondents' Submission Agreements signed as follows:

Cornelius VanInwegen: October 4, 1994

John Sullivan: October 5, 1994

CASE INFORMATION 94-01802 (Hart)

Statement of Claim filed: May 11, 1994

Claimants' Submission Agreement signed: May 9, 1994

Joint Statement of Answer filed by Respondents: September 28, 1994

Respondents' Submission Agreements signed as follows:

Smith Barney Inc.: September 28, 1994

Cornelius VanInwegen: October 4, 1995

John Sullivan: October 5, 1994

CASE INFORMATION 94-01955 (Kent)

Statement of Claim filed: May 24, 1994

Claimant's Submission Agreement signed: May 12, 1994

Joint Statement of Answer filed by Respondents: October 21, 1994

Respondents' Submission Agreements signed as follows:

Smith Barney Inc.: September 28, 1994

Cornelius VanInwegen: October 4, 1994

John Sullivan: November 2, 1994

CASE INFORMATION 94-02131 (Clark)

Statement of Claim filed: June 7, 1994

Claimant's Submission Agreement signed: May 5, 1994

Joint Statement of Answer filed by Respondents: September 19, 1994

Respondents' Submission Agreements signed as follows:

Cornelius VanInwegen: October 4, 1994

John Sullivan: October 5, 1994

CASE INFORMATION 94-02186 (Dowd and Mahoney)

Statement of Claim filed: June 9, 1994

Claimants' Submission Agreements signed as follows:

Bernadeen Dowd: May 2, 1994

Barbara Mahoney: May 21, 1994

Joint Statement of Answer filed by Respondents: September 27, 1994

Respondents' Submission Agreements signed as follows:

Smith Barney Inc.: November 3, 1994

Kiel VanInwegen: October 4, 1994

John Sullivan: October 5, 1994

CASE INFORMATION 94-02415 (Rogers)

Statement of Claim filed: June 23, 1994

Claimants' Submission Agreement signed: June 9, 1994

Joint Statement of Answer filed by Respondents: November 17, 1994

Respondents' Submission Agreements signed as follows:

Smith Barney Inc.: November 17, 1994

Cornelius VanInwegen: October 24, 1994

CASE INFORMATION 94-03661 (Paduano)

Statement of Claim filed: September 6, 1994

Claimants' Submission Agreement signed: August 9, 1994

Joint Statement of Answer filed by Respondents: December 1, 1994

Submission Agreement signed by Smith Barney Inc.: December 1, 1994

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s): October 23, 1995 (two sessions)  
October 24, 1995 (three sessions)

Hearing Location: Boise, Idaho

CASE SUMMARY

In separately filed Statements of Claim, Claimants alleged that Respondents refused to allow Claimants' broker, Wayne Hill, to contact Claimants in a timely manner, when Mr. Hill believed market conditions placed Claimants' accounts at risk. Claimants further alleged violations of National Association of Securities Dealers, Inc. (NASD) Rules of Fair Practice with respect to Claimants' Smith Barney Shearson Special Equities Fund investment.

In separately filed Statements of Answer, Respondents denied that they ever prevented Mr. Hill from contacting Claimants or any of his other clients and denied any liability to Claimants. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimant Elden Farm requested damages in the amount of

\$1419.01.

Respondents requested dismissal of Mr. Farm's Statement of Claim, or if liability be established against Respondents, that damages be limited to .23 cents per share, or \$759.00.

Claimants Ivan and Lellah Harris requested damages in the amount of \$5,687.84.

Respondents requested dismissal of Ivan and Lellah Harris' Statement of Claim, or if liability be established against Respondents, that damages be limited to .23 cents per share, or \$3,042.21.

Claimants Dean and Bernice Marler requested damages in the amount of \$883.04.

Respondents requested dismissal of Dean and Bernice Marler's Statement of Claim, or if liability be established against Respondents, that damages be limited to .23 cents per share, or \$472.33.

Claimants John and Gwendolyn Wilson requested damages, fees and costs totalling \$3,287.46.

Respondents requested dismissal of John and Gwendolyn Wilson's Statement of Claim, or if liability be established against Respondents, that damages be limited to .23 cents per share, or \$1,670.44.

Claimants Edward and Norma Kobe requested damages in the amount of \$3,634.59.

Respondents requested dismissal of Edward and Norma Kobe's Statement of Claim, or if liability be established against Respondents, that damages be limited to .23 cents per share, or \$1,943.73.

Claimants Richard and Janice Moon requested damages in the amount of \$9,109.03.

Respondents requested dismissal of Richard and Janice Moon's Statement of Claim, or if liability be established against Respondents, that damages be limited to .23 cents per share, or \$4,872.12.

Claimants Charles and Beatrice Baldridge requested damages in the amount of \$5,009.14.

Respondents requested dismissal of Charles and Beatrice Baldridge's Statement of Claim, or if liability be established against Respondents, that damages be limited to .23 cents per share, or \$2,679.31.

Claimants Bill and Mary Hart requested damages in the amount of \$974.76.

Respondents requested dismissal of Bill and Mary Hart's Statement of Claim, or if liability be established against Respondents, that damages be limited to .23 cents per share, or \$521.38.

Claimant Sharon Kent requested damages in the amount of \$1,768.99.

Respondents requested dismissal of Ms. Kent's Statement of Claim, or if liability be established against Respondents, that damages be limited to .23 cents per share, or \$946.21.

Claimant Wes L. Clark requested damages in the amount of \$428.34.

Respondents requested dismissal of Mr. Clark's Statement of Claim, or if liability be established against Respondents, that damages be limited to .23 cents per share, or \$229.11.

Claimants Bernadeen Dowd and Barbara Mahoney requested damages in the amount of \$1,803.42.

Respondents requested dismissal of Bernadeen Dowd's and Barbara Mahoney's Statement of Claim, or if liability be established against Respondents, that damages be limited to .23



cents per share, or \$964.62.

Claimants Denzil and Traci Rogers requested damages in the amount of \$1,273.15.

Respondents requested dismissal of Denzil and Traci Rogers' Statement of Claim, or if liability be established against Respondents, that damages be limited to .23 cents per share, or \$651.08.

Claimants Paul and Susan Paduano requested damages in the amount of \$1,777.62.

Respondents requested dismissal of Paul and Susan Paduano's Statement of Claim, or if liability be established against Respondents, that damages be limited to .23 cents per share, or \$950.82.

#### OTHER ISSUES CONSIDERED AND DECIDED

The evidentiary hearing was expedited by the parties through stipulation of Claimants' and Respondents' counsel to put on fully two of the Claimant's cases and then stipulate that the factual relationship between the Respondents and the other Claimants would be the same, and the only individual differences would be the damage claims which were submitted on Affidavit.

On November 6, 1995, Claimants, through their counsel, withdrew from consideration by the presiding arbitrator, their request for attorney fees.

#### AWARD

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

1. All claims by Claimants against Respondents Kiel VanInwegen and John Sullivan are dismissed.

2. Respondent Smith Barney Shearson Inc. is solely liable for and shall pay to Claimant Elden Farm the sum of \$759.00.

3. Respondent Smith Barney Shearson Inc. is solely liable for and shall pay to Claimants Ivan and Lellah Harris the sum of \$3,042.21.

4. Respondent Smith Barney Shearson Inc. is solely liable for and shall pay to Claimants Dean and Bernice Marler the sum of \$472.33.

5. Respondent Smith Barney Shearson Inc. is solely liable for and shall pay to Claimants John and Gwendolyn Wilson the sum of \$1,670.44.

6. Respondent Smith Barney Shearson Inc. is solely liable for and shall pay to Claimants Edward & Norma Kobe the sum of \$1,943.73.

7. Respondent Smith Barney Shearson Inc. is solely liable for and shall pay to Claimants Richard and Janice Moon the sum of \$4,872.12.

8. Respondent Smith Barney Shearson Inc. is solely liable for and shall pay to Claimants Charles and Beatrice Baldrige the sum of \$2,679.31.

9. Respondent Smith Barney Shearson Inc. is solely liable for and shall pay to Claimants Bill and Mary Hart the sum of \$521.38.

10. Respondent Smith Barney Shearson Inc. is solely liable for and shall pay to Claimant Sharon Kent the sum of \$946.21.

11. Respondent Smith Barney Shearson Inc. is solely liable for and shall pay to Claimant Wes L. Clark the sum of \$229.11.

12. Respondent Smith Barney Shearson Inc. is solely liable for and shall pay to Claimants Bernadeen Dowd and Barbara Mahoney the sum of \$964.62.

13. Respondent Smith Barney Shearson Inc. is solely liable

for and shall pay to Claimants Denzil and Traci Rogers the sum of \$680.00.

14. Respondent Smith Barney Shearson Inc. is solely liable for and shall pay to Claimants Paul and Susan Paduano the sum of \$950.82.

15. The aforementioned awards granted against Smith Barney Shearson Inc. shall bear interest from the date of loss on October 19, 1993 until paid at the judgment interest rate of twelve percent (12%) simple annual interest computer per diem.

16. Any claims for punitive damages are denied.

17. The parties shall each bear their respective costs including attorney's fees.

#### OTHER COSTS

Prior to the hearing, Ann Parry, Respondents' counsel, agreed to pay the travel costs and expenses incurred by arbitrator Julian D. Jensen in connection with Mr. Jensen's travel to Boise, Idaho to preside in this matter. Accordingly, Respondent Smith Barney Shearson Inc. is solely liable for and shall pay to the NASD the sum of \$559.20 in costs, as reimbursement of Mr. Jensen's travel expenses incurred in this matter.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund Claimants' hearing session deposits totalling \$970.00. Forum fees are assessed against Respondent Smith Barney Shearson Inc., solely, in the amount of \$1,500.00, calculated as follows: Five hearing sessions times \$300.00/session.

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

PRESIDING ARBITRATOR

Name ..... Public / Industry

Julian D. Jensen, Esq.

Public Arbitrator

Presiding Arbitrator's Signature

*Julian D. Jensen*  
Julian D. Jensen, Esq.

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Date of Decision: 12/22/95