

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Joanne S. Matson

95-00102

Name of Respondents

Smith Barney Shearson, Inc.  
Joseph D. Holsinger

---

**REPRESENTATION**

For Claimant: Hugh N. Smith, Esq. of the law firm of Smith & Fuller, P.A., Tampa, Florida.

For Respondents: Christopher B. O' Malley, Esq., in-house counsel at Smith Barney, Inc.

**CASE INFORMATION**

Statement of Claim filed: January 9, 1995

Claimant's Submission Agreement signed on: January 23, 1995

Joint Statement of Answer filed by Respondents on: April 3, 1995

Respondent Smith Barney Shearson Inc's Submission Agreement signed on: April 3, 1995

The Respondent Joseph D. Holsinger did not execute a submission agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

**HEARING INFORMATION**

Three sessions were conducted in Tampa, Florida on August 22 and 23, 1996.

**CASE SUMMARY**

Claimant alleged that in October of 1990 she opened three accounts with Respondents and advised them that the money she was giving to them was the entirety of her life savings and that she would be totally dependent for her financial survival on the income generated by her

investments in these three accounts. Claimant next alleged that she had very limited previous investment experience and placed her full trust and confidence in Respondents' expertise in investing. Claimant next alleged that Respondents breached their duty to the Claimant by engaging in a calculated and systematic scheme to churn or excessively trade the Claimant's accounts in an effort to generate the maximum amount of commissions. Claimant next alleged that an analysis of the Claimant's accounts revealed not only the presence of extremely inappropriate investments in light of the Claimant's investment objectives, but also very short holding periods for virtually all of the investments purchased by Respondents on behalf of the Claimant. Claimant alleged that as a result, the commissions generated by Respondents are clearly in excess of any reasonable commissions Respondents would have generated had they been acting solely in the Claimant's best interest.

Respondents maintained the claim is an attempt by Claimant to recoup the costs of her investments, despite the profitability of her accounts. Respondents next maintained that the Claimant is a sophisticated investor who always followed the progress of all of her investments. Respondents next maintained that the Claimant informed Mr. Holsinger that she wanted increased monthly income and growth and her "New Account Verification Profile" showed that Claimant changed her goals to include "tax reduction" "appreciation with risk" and "speculation." Respondents next maintained that Mr. Holsinger continued to discuss the risks associated with growth with the Claimant and Respondents followed all of Claimant's instructions and directions. Respondents next maintained that Joseph Holsinger discussed all trades with the Claimant before she instructed Mr. Watson to execute the trades and Respondents reviewed with the Claimant the transactional costs of all transactions before the trades were made.

#### **RELIEF REQUESTED**

Claimant requested damages in excess of \$50,000.00 plus interest, expenses, attorneys' fees and punitive or treble damages.

Respondents requested that the Statement of Claim be dismissed and that costs be assessed against the Claimant.

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

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 original(s) remain 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 by the Claimant against both Respondents be and hereby are dismissed in all respects as the panel found no wrongdoing on the part of either Respondent.

2. The Claimant's request for punitive and/or treble damages is denied.
3. Each party shall bear their respective costs including attorneys' fees.

### **OTHER COSTS**

The Respondent Smith Barney Shearson, Inc. shall pay to the NASD the sum of \$1,000.00 representing the adjournment fee for a postponement of hearings that were scheduled for June 19 and 20, 1996.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$2250.00 (3 sessions x \$750.00 per session).

1. Claimant is hereby assessed \$2250.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$1,500.00.

2. The NASD shall retain the \$250.00 nonrefundable claim filing fee previously paid by the Claimant to the NASD.

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

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

Name

Public/Industry

/s/

\_\_\_\_\_  
Leo H. Kerns, Esq.

Public

/s/

\_\_\_\_\_  
Vernon E. Allen

Public

/s/

\_\_\_\_\_  
Scott A. Spencer

Industry

October 19, 1996

Date of Decision: \_\_\_\_\_