

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

**In the matter of the Arbitration Between**

**Name of Claimant**

**Kem Dibbs**

**v.**

**NASD Arbitration  
No. 95-00203**

**Name of Respondents**

**Smith Barney, Inc. and Lee West**

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**REPRESENTATION**

**For Claimant: I. Richard Ruman, Esq.  
Beverly Hills, California**

**For Respondent Smith Barney, Inc.: Pete S. Michaels, Esq.  
Smith Barney, Inc.  
Beverly Hills, California**

**For Respondent Lee West: Mitchell Albert, Esq.  
Haight, Brown & Bonesteel  
Santa Monica, California**

**CASE INFORMATION**

**Amended Statement of Claim filed: January 16, 1995**

**Claimant's Submission Agreement signed: December 6, 1994**

**Statement of Answer filed by Respondent Smith Barney, Inc.: May 10, 1995**

**Statement of Answer and Counter-Claim filed by Respondent Lee West: May 15, 1995**

**Respondent's Smith Barney, Inc.'s Submission Agreement signed: May 9, 1995**

**Respondent Lee West's Submission Agreement signed: June 29, 1995**

## **HEARING INFORMATION**

Hearing Dates / Sessions: December 13, 1995 (2 sessions)  
December 14, 1995 (2 sessions)

Hearing Location: Los Angeles, California

## **CASE SUMMARY**

Claimant alleged that Respondent West advised Claimant to buy a one-quarter interest in a Mexico condominium. Claimant further alleged that West advised Claimant that he would make ten percent interest (10%) on the investment, that West would guarantee the investment funds and that West would return the money and interest thereon at any time Claimant requested. Claimant alleged that the conduct described above constituted fraud, breach of fiduciary duty and negligence. Claimant further alleged that Respondent Smith Barney, Inc. was aware of the alleged activities of Respondent West and authorized and/or ratified his conduct. Claimant further alleged that Smith Barney, Inc. neglected to warn Claimant of other illegal and unethical activities allegedly engaged in by West.

Respondent West alleged that Claimant suggested to West that Claimant purchase an interest in West's Mexican condominium. West denied the material allegations of the Claimant. Respondent West alleged that Counter-Respondent Dibbs owes West for condominium expenses.

Respondent Smith Barney, Inc. alleged that Claimant was fully aware that Smith Barney was not a party to the condominium purchase. Respondent denied the material allegations of the Claimant.

## **RELIEF REQUESTED**

Claimant requested compensatory damages of \$95,000.00, together with interest thereon. Claimant requested punitive damages in the sum of \$4,999,999.00.

Respondent Smith Barney, Inc. requested that all of the claims against the Respondent be dismissed and that the costs of this proceeding, including all forum fees, costs, and attorneys fees be assessed against the Claimant.

Respondent West requested that Claimant take nothing by his claim. West further requested damages in excess of \$10,000.00 in an amount to be proven on his counter-claim. West further requested that all forum fees and costs be assessed against Claimant.

## **OTHER ISSUES CONSIDERED AND DECIDED**

The parties have agreed that the Award in this matter may be executed in either 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 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 of the Claimant's claims are denied in their entirety.
2. Claimant's request for punitive damages is denied.
3. Respondent Lee West's counter-claim against Claimant/Counter-Respondent is denied in its entirety.
4. The parties shall each bear their respective costs, including attorney's fees.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed:


Three hearing sessions @ \$1,500.00/session	=	\$4,500.00
Total fees assessed	=	\$4,500.00
Claimant's one-half share	=	\$2,250.00
Credit for hearing session deposit	=	\$ 960.00
Claimant's balance due	=	\$1,290.00
Respondent Smith Barney's one-quarter share	=	\$1,125.00
Respondent Smith Barney's balance due	=	\$1,125.00
Respondent Lee West's one-quarter share	=	\$1,125.00
Credit for hearing session deposit	=	\$ 300.00
Respondent Lee West's balance due	=	\$ 825.00

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

## ARBITRATORS

Name	Public / Industry
Norman R. Cohen	Public Arbitrator
Robert S. Granas	Public Arbitrator
Leo M. Klein	Industry Arbitrator

### Concurring Arbitrators' Signatures

  
Norman R. Cohen

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Robert S. Granas

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Leo M. Klein

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

## ARBITRATORS

Name	Public / Industry
Norman R. Cohen	Public Arbitrator
Robert S. Granas	Public Arbitrator
Leo M. Klein	Industry Arbitrator

### Concurring Arbitrators' Signatures

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Norman R. Cohen

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Robert S. Granas

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Leo M. Klein

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

## **ARBITRATORS**

<b><u>Name</u></b>	<b><u>Public / Industry</u></b>
Norman R. Cohen	Public Arbitrator
Robert S. Granas	Public Arbitrator
Leo M. Klein	Industry Arbitrator

### **Concurring Arbitrators' Signatures**

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Norman R. Cohen

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Robert S. Granas

  
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Leo M. Klein

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

1/17/96