

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

David & Marguerite Leonard

vs.

Award No.  
95-00286

Name of Respondents

Smith Barney Shearson, Inc.  
John R. Thornbury

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**REPRESENTATION**

For Claimants, David Leonard ("Mr. Leonard") and Marguerite Leonard ("Ms. Leonard") (collectively "Claimants"), appeared John B. Madden, Jr. from the law firm of Arent Fox Kitner Plotkin & Kahn, located in New York, New York.

For Respondents, John R. Thornbury ("Thornbury") and Smith Barney Shearson, Inc. ("Smith Barney") (collectively "Respondents"), appeared Sean Coughlin, Esq., in-house counsel for Smith Barney, located in New York, New York.

**CASE INFORMATION**

Statement of Claim was filed on January 19, 1995.

Claimants' combined Submission Agreement was signed on January 17, 1995.

A Joint Statement of Answer was filed by Respondents, Thornbury and Smith Barney, on March 21, 1995. Respondent Smith Barney's Submission Agreement was signed on September 29, 1995. Respondent Thornbury's Submission Agreement was signed on March 21, 1995.

**HEARING INFORMATION**

Hearing Dates/Sessions:	May 20, 1996	-	2 sessions
	June 5, 1996	-	2 sessions
	June 28, 1996	-	2 sessions

The hearings were held at the NASD offices in New York, New York.

### CASE SUMMARY

Claimants alleged that in April 1992, they opened an IRA account and a regular brokerage account with Shearson Lehman Brothers, Inc. ("SLB"), whose retail brokerage was later acquired by Smith Barney. Claimants also alleged that Thornbury was Claimants' broker while their account was at SLB, and later at Smith Barney.

Claimants alleged that prior to opening their accounts with SLB, they had no experience in investing other than the purchase of a single security for \$1,200 over twenty years prior to this case. Claimants alleged that in April 1992, Mr. Leonard invested a total of \$854,000 with SLB, with \$729,000 in the FMA account, and \$125,000 in an IRA. Claimants also alleged that they explained to Thornbury that they would be "depending on the income from the FMA Account for virtually all of their retirement income."

Claimants alleged that Thornbury suggested that they invest in bonds denominated in foreign currencies, without proposing any alternative investment strategies. Claimants also alleged that Thornbury informed them that they would be able to obtain approximately \$72,000 in annual income, since the FMA was set up to earn 12% annually, and that it was safe to invest in this FMA for three reasons: "(a) any currency fluctuations could be ridden out by reinvesting in the same currencies at maturity; (b) the risk was spread over several currencies; and (c) the investments were 'laddered' in maturity." Claimants further alleged that Thornbury invested \$620,000 of the FMA account in foreign currency-denominated bonds.

Claimants alleged that "over the course of the next 2 1/2 years," the value of the bonds fell drastically because of declines in foreign currency exchange rates. Claimants alleged that upon asking Thornbury about the decline in bonds' value, Thornbury made misstatements aimed at providing false assurances.

Claimants alleged that in "reliance on an annual income from their FMA account of more than \$72,000," Mr. Leonard invested another \$85,000 in a company called Diamond Chemical. Claimants also alleged that this investment was worthless at the time of filing this complaint. Claimants further alleged that they received a taxable income of \$22,877 for 1992 and a taxable income of \$30,112 for 1993, instead of the \$72,000 annual income suggested by Thornbury. Claimants further alleged that had they known that the true return from the foreign bonds would have been 4 - 5%, Mr. Leonard would not have risked his money with Diamond Chemical.

Claimants claimed that in November 1993, Thornbury suggested that Mr. Leonard buy "Central Maine Power, a \$14 stock worth \$23 and going to be \$18 in the short term". Claimants contended that Mr. Leonard authorized a purchase of 2,000 shares at a price of \$14 per share, but that Thornbury bought the stock at \$16 3/4. Claimants further alleged that Mr. Leonard told Thornbury to sell these shares in early 1994, when the stock was trading at \$13 1/2, but that Thornbury ignored his instructions. Claimants contended that Thornbury finally sold the shares when the stock price had fallen to \$11 1/2.

Respondents maintained that Thornbury found Mr. Leonard to be a sophisticated and savvy investor, rather than an unsophisticated investor. Respondents contended that Mr. Leonard approved Thornbury's suggestion, and investments were subsequently made. Respondents also contended that Mr. Leonard maintained regular contact with Thornbury, and that copies of Claimants' brokerage statements were sent to their CPA, Ronald Tepper.

Respondents maintained that Claimants' investment in Diamond Chemical was not done through Smith Barney. Respondents also deny that any purchase or sales orders entered by Claimants for their Central Maine Power stock were ignored.

In addition, Respondents made thirteen affirmative defenses, including, but not limited to, Claimants' failure to state a claim upon which relief could be granted, Claimants' failure to repudiate transactions in timely manner, doctrine of laches, applicable statutes of limitations, and Claimants' failure to mitigate their damages.

### **RELIEF REQUESTED**

Claimants requested compensatory relief of \$120,000 for their loss in the principal value of the FMA, compensatory relief of \$100,000 for the difference in the actual interest earned and the amount promised by Thornbury, compensatory relief of \$10,000 for losses resulting from Thornbury's failure to sell Central Maine Power stock upon Mr. Leonard's request, reimbursements for any costs stemming from inaccurate information supplied by Smith Barney, compensatory relief of \$85,000 for losses resulting from Mr. Leonard's investment in Diamond Chemical, interest, punitive damages, costs and attorneys' fees, and other relief deemed proper by the panel.

Respondents requested that the Claimants' claims be dismissed in their entirety and all costs of the arbitration proceeding be assessed against the Claimants.

### **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 a conformed copy 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 against the Respondents be and hereby are dismissed in their entirety.
2. Each party is responsible for its own costs, including attorneys' fees.

**FORUM FEES**

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the arbitrators have determined that the NASD shall retain the \$200.00 non-refundable filing fee previously deposited by Claimants and have assessed the following forum fees:

6 Sessions @ \$750 = \$4,500.00

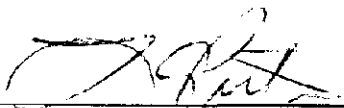
1. Claimants, David Leonard and Marguerite Leonard, be and hereby are jointly and severally liable for the sum of \$2,250, representing one-half of the total forum fees assessed. Claimant previously deposited \$750 with the NASD. Therefore, Claimant owes \$1,500.00 to the NASD.
2. Respondents, John R. Thornbury and Smith Barney Shearson, Inc., be and hereby are jointly and severally liable for the sum of \$2,250 representing one-half of the total forum fees assessed. In addition, Smith Barney requested a postponement of the scheduled hearing on March 13, 1996, which was granted; as a result, Smith Barney was assessed a \$750.00 postponement fee, which was paid in full. Smith Barney was also assessed \$60.00 in administrative costs, which were paid in full. Therefore, Respondents owe \$2,250 to the NASD.

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

**ARBITRATION PANEL**

Lawrence A. Pittore, Esq.	-	Public Chairperson
William J. Brennan	-	Public Panelist
Herbert Z. Geiger, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature

  
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Lawrence A. Pittore, Esq.

Date of Decision: July 29, 1996

**AFFIRMATION**

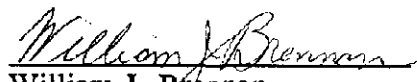
I, Lawrence A. Pittore, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

  
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Lawrence A. Pittore, Esq.

**ARBITRATION PANEL**

Lawrence A. Pittore, Esq.	-	Public Chairperson
William J. Brennan	-	Public Panelist
Herbert Z. Geiger, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature

  
William J. Brennan

Date of Decision: July 29, 1996

**AFFIRMATION**


I, WILLIAM J. BRENNAN, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

  
William J. Brennan

**ARBITRATION PANEL**

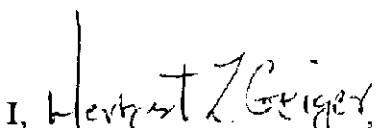
Lawrence A. Pittore, Esq.	-	Public Chairperson
William J. Brennan	-	Public Panelist
Herbert Z. Geiger, Esq.	-	Industry Panelist

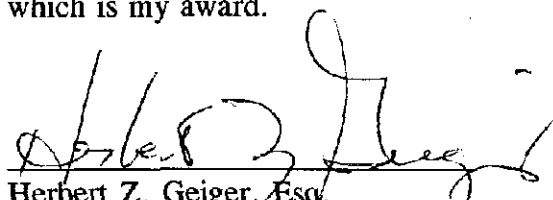
Concurring Arbitrator's Signature

  
Herbert Z. Geiger, Esq.

Date of Decision: July 29, 1996

**AFFIRMATION**

I, , do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

  
Herbert Z. Geiger, Esq.