

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Pueblo of Sandia, a federally  
recognized Indian tribe,

Claimant,

v.

No: 95-01080

Smith Barney Shearson, Inc., and  
Jeffrey M. Lamb

Respondents.

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### **REPRESENTATION OF PARTIES**

Claimant Pueblo of Sandia, a federally recognized Indian tribe, ("Claimant") were represented by Clinton W. Marrs, Esq. of Kemp, Smith, Duncan & Hammond, P.C. located in Albuquerque, New Mexico.

Respondents Smith Barney Shearson, Inc. ("Smith Barney") and Jeffrey M. Lamb ("Lamb") (collectively referred to as "Respondents") were represented by Harry T. Walters, Esq. of Smith Barney, Inc. located in New York, New York. Respondent Lamb was previously represented by William D. Nelson, Esq. of Robinson, Waters, O'Dorisio and Rapson located in Denver, Colorado.

Respondent Kemper Securities, Inc. was dismissed from this matter prior to hearing.

### **CASE INFORMATION**

The Statement of Claim was filed on or about March 2, 1995.

Claimant's Submission Agreement was signed on February 24, 1995 by Alex Lujan, Governor of Pueblo of Sandia.

Respondent Smith Barney's Statement of Answer was filed on or about May 18, 1995.

Respondent Smith Barney's Submission Agreement was signed on August 29, 1995 by Harry T. Walters, Senior Vice President and Associate General Counsel of Smith Barney.

Kemper Securities, Inc. and Respondent Lamb's Joint Statement of Answer was filed on or about May 18, 1995.

Kemper Securities, Inc.'s Submission Agreement was signed on April 11, 1995 by Janet L. Reali, Executive Vice President and Corporate Counsel of Kemper Securities.

NASD Regulation, Inc. Office of Dispute Resolution has no record that Respondent Lamb submitted a signed Submission Agreement.

The Motion to Amend the Statement of Claim and Amended Statement of Claim was filed on or about May 13, 1996. Respondents' Response to the Motion to Amend the Statement of Claim was filed on or about May 31, 1996.

Respondents Kemper Securities, Inc. and Lamb's Motion to Dismiss all claims against Lamb while employed by Kemper and to Dismiss Kemper as a respondent was filed on or about August 1, 1996. Claimant's Response thereto was filed on or about September 25, 1995.

Claimant's Cost and Fee Bill and Supporting Affidavit was filed on or about March 13, 1997. Respondents' Opposition to Claimant's submission of a Cost and Fee Bill was filed on or about March 19, 1997.

### **HEARING INFORMATION**

The telephonic pre-hearing conference was held on June 10, 1996 for one (1) session.

The hearing was held on:

September 10, 1996 for two (2) sessions;  
September 11, 1996 for two (2) sessions;  
February 18, 1997 for two (2) sessions;  
February 19, 1997 for two (2) sessions;  
February 25, 1997 for two (2) sessions; and  
February 26, 1997 for two (2) sessions.

The hearing was held in Albuquerque, New Mexico.

### **CASE SUMMARY**

Claimant alleged that Respondents made various direct and indirect investments in government and government agency fixed-income securities, and that those securities were unsuitable for Claimant, and that Respondents' recommendations violated federal securities laws, state statutory and common law and industry regulations and practices.

Claimant alleged that its controller, Stanley Hamamoto ("Hamamoto"), met with Respondent Lamb, a registered representative and financial consultant with Respondent Smith Barney, with a view towards determining whether Claimant should invest funds through Respondent Smith Barney. Claimant contended that it advised Respondent Lamb that its tribal counsel and its tribal administrators were inexperienced and unsophisticated in investment matters and that they would rely on Respondent Lamb to recommend a suitable program of investments that was suitable for Claimant's investment objectives. Claimant asserted that, in reliance on Respondent Lamb's representations and assurances, Claimant opened securities accounts at Respondent Smith Barney and made various securities transactions through Smith Barney, including: MFS Government Limited Maturity Fund; TNE Limited Term U.S. Government Fund; RCM Strategic Global Government Fund, Inc; Federal Home Loan Mortgage Corporation Bonds; and Tennessee Valley Authority principal strips.

Claimant maintained that, in late March, 1994, Respondent Lamb informed Claimant that he was terminating his employment with Respondent Smith Barney and undertaking employment as a broker with Kemper Securities. Claimant maintained that it subsequently transferred its securities portfolio to Kemper Securities. Claimant contended that Respondents induced the purchases of securities in Claimant's account which were unsuitable in light of the character of the account and Claimant's financial situation and needs, investment objectives, lack of investment experience and lack of investment sophistication.

Claimant asserted various claims, including, but not limited to: § 12(2) of the Securities Act of 1933, 15 U.S.C. § 771(2); § 10(b) of the Securities Act of 1934, 15 U.S.C. § 78j(b), and of Rule 10b-5; N.M. Stat. Ann § 58-13B-30(c); Breach of Fiduciary Duty; Common Law Fraud; Control Person Liability; and Respondeat Superior.

Respondent Smith Barney denied all liability to Claimant in its Statement of Answer.

Respondents alleged that Claimant's investment objectives included current income, and that the Claimant was willing to incur "moderate" exposure to risk and no speculation. Respondents stated that, Respondent Lamb accordingly recommended investments in fixed income securities or mutual funds that held fixed income securities. Respondents contended that the vast majority of these securities were U.S. Government or agency bonds that were backed directly or indirectly by the full faith and credit of the U.S. Government. Respondents asserted that these securities were entirely suitable and appropriate for investors, like the Claimant, who sought income with moderate risk. Respondents maintained that, during their lives at Smith Barney, the Claimant's

accounts earned over \$350,000 in interest and dividends, and at the time of the transfer to Kemper Securities, the Claimant had suffered no realized losses. Respondents alleged that, although the liquidation value of the portfolio had declined, Respondents were not responsible for any decision to liquidate these securities sooner than the 3-5 year time that Claimant contends was its investment horizon.

Respondent Lamb also denied all liability to Claimant in his Statement of Answer. Respondent Lamb alleged that Claimant's accounts were properly handled, that all securities purchased in Claimant's accounts were suitable and appropriate, and that all transactions occurred with the prior authorization and direction of the Claimant. Respondent Lamb asserted that this action was an attempt by Claimant and specifically its controller, Mr. Hamamoto, to alter investment decisions which it made and to shift the responsibility for those decisions to Respondents. Respondent Lamb contended that all investments were suitable and appropriate for the Claimant and consistent with its objectives and needs as conveyed by Mr. Hamamoto.

Respondents asserted various affirmative defenses, including, but not limited to: that the Statement of Claim fails to state a claim upon which relief can be granted; that Respondents did not make any false representations to Claimant; that Respondents did not act with scienter in any respect concerning the accounts; that the claims are barred, in whole or in part, by the applicable limitations period, eligibility period and by principals of laches; that Claimant has failed to mitigate its damages; that the transactions in the account were suitable in light of Claimant's financial circumstances and investment objectives; and that the claim is barred by the doctrines of laches, waiver and estoppel.

#### **RELIEF REQUESTED**

Claimant requested: that the arbitrators enter a judgement for damages to be determined at hearing; that the arbitrators award Claimant pre-judgement interest, post-judgement interest, plus its costs associated with this action; and that the arbitrators grant claimant such other and further relief as is just and proper.

Respondents requested that Statement of Claim be dismissed in its entirety and an award to Respondents of their costs, fees and disbursements.

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

Respondent Kemper Securities, Inc. was dismissed from this matter prior to hearing.

Claimant's Motion to Amend the Statement of Claim was granted.

All costs of the stenographic reporter shall be borne by the party who obtained the stenographic reporter.

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 pleading, the testimony, the evidence presented at the hearing, and post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) The Statement of Claim is hereby dismissed in its entirety with prejudice. Based on the record, the transactions complained of by Claimant were neither unsuitable nor unauthorized. With respect to the initial transactions in MFS, assuming it was not the desired vehicle for investing in government securities as desired by Claimant, had Claimant's investment committee even casually reviewed its monthly account statements, the misunderstanding regarding the vehicle selected could have been resolved without a loss - and a modest profit. Claimant did not object to any activity until well after the fact, once a significant market decline had occurred and should not now be permitted to profit from its own inattentiveness and inaction, notwithstanding its lack of sophistication. Claimant's lack of sophistication should have prompted a close monitoring of its accounts, if, for no other reason, the educational value. While Smith Barney's supervisory procedures fell short of acceptable standards, the break down in the supervision did not result in any harm to Claimant. Proper supervision would not have warranted any different action than what actually occurred; and
- (2) Other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby dismissed in their entirety with prejudice.

### FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 per pre-hearing session. There were twelve (12) hearing sessions x \$1,000 = \$12,000 in forum fees. There was one (1) pre-hearing session x \$300 = \$300. Total forum fees = \$12,300. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure (the "Code"), NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$250 previously deposited by the Claimant. NASD Regulation, Inc. Office of Dispute Resolution shall refund the hearing session deposit in the amount of \$1,000 previously deposited by the Claimant.

Pursuant to §10332(c) of the Code, Respondents Smith Barney Shearson, Inc. and Jeffrey M. Lamb are jointly liable for, and shall pay forum fees in the amount of \$12,300. Pursuant to §10333 of the NASD Code of Arbitration Procedure, Respondent Smith Barney Shearson, Inc. is also liable for, and shall pay the member surcharge in the amount of \$500.

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Concurring Arbitrators' Signatures

\s\ Barry H. Barnett, Esq.  
Barry H. Barnett, Esq.  
Chairperson  
Public Arbitrator

March 25, 1997  
Dated:

\s\ Donald W. Hurst  
Donald W. Hurst  
Panelist  
Public Arbitrator

March 21, 1997  
Dated:

\s\ Mike Edward Mimovich  
Mike Edward Mimovich  
Panelist  
Industry Arbitrator

March 24, 1997  
Dated:

For NASD Regulation use only:  
Date award served on the parties: March 25, 1997