

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Joseph Gabbe

95-01117

Name of Respondents

Smith Barney Shearson, Inc.
Dennis A. Schmidt

REPRESENTATION

For Claimant: Stephen Rauch, Esq. of the law firm of Rauch & Brody, Palm Beach Gardens, Florida

For Respondents: Alejandro Schwed, Esq., in-house counsel at Smith Barney Shearson, Inc.

CASE INFORMATION

Statement of Claim filed: March 3, 1995

Claimant's Submission Agreement signed on: February 28, 1995

Joint Statement of Answer filed by Respondents on: May 2, 1995

Respondent Smith Barney Shearson Inc's Submission Agreement signed on: May 2, 1995

Respondent Dennis A. Schmidt's Submission Agreement signed on: April 28, 1995

HEARING INFORMATION

Two hearing sessions were conducted in the above matter on August 15, 1996 in Ft. Lauderdale, Florida.

CASE SUMMARY

Claimant alleged that he called Dennis Schmidt in the fall of 1993 and asked his advice in the investment of approximately \$250,000.00 and specified that he wanted an investment that would guarantee good income, would have little price fluctuation and would be short to intermediate term. Claimant next alleged that Mr. Schmidt had been Mr. Gabbe's broker for approximately ten years, he was an unsophisticated investor, more than 80 years of age, and relied completely on Mr. Schmidt's advice. Claimant next alleged Respondent Schmidt sold Mr. Gabbe's CMO's worth approximately \$236,000.00 at that time (September, 1993) and also sold Mr. Gabbe's Alliance N.A. Government CLB Income Trust ("Alliance N.A.") worth approximately \$20,000.00. Claimant alleged he had purchased the latter investment on Mr. Schmidt's assurance that it was absolutely safe because the assets were in the U.S. and Canada. Claimant next alleged when he received his October and November statements, he became alarmed at the sharp drop in the values of his investments (down \$13,777 or 5.38%) and called Mr. Schmidt and Mr. Schmidt informed the Claimant that the statements were inaccurate due to the recent merger of Drexel, Burnham and Smith Barney and that his investments had either held their own or actually increased in value; however, subsequent statements only confirmed the downward slide of these investments. Claimant alleged that Mr. Schmidt said that if he was unhappy with the investments, he would buy them back at their purchase prices. Claimant next alleged when he transferred his account to Merrill Lynch in April, 1994, the investments were down to \$225,825, a loss of \$30,175 or approximately 11.78%. Claimant next alleged that at the time that the claim was filed in January, 1995, these assets were down approximately \$60,000; however, since that time, they have increased in value to \$209,391, for a current loss of approximately \$46,600, or 18%.

Claimant further alleged that Mr. Schmidt sold him investments that were entirely unsuitable for his needs since the CMO's mature, in accordance with their terms in 2022 and 2023 and there is enormous price fluctuation. Furthermore, Claimant alleged the Alliance N.A. investment is primarily in Mexican and Argentinean assets. Claimant next alleged that Mr. Schmidt reneged on his promise to buy back the investments at their purchase prices, although duly demanded by Mr. Gabbe, both orally and in writing.

Respondents maintained when Claimant called Dennis Schmidt in 1993 and informed him he had a sizeable amount to invest, Dennis Schmidt recommended investments consistent with his purchases in the past and his investment objectives, specifically, he recommended the CMO's which had a duration of 10 to 15 years. Respondents maintained that based on a market analysis at the time, these intermediate term investments offered a better potential yield than similar short or long term investments and they were rated AAA. Respondents next maintained these investments fit squarely with Claimant's objectives. Respondents next maintained that as a result of fluctuations in the securities markets for which Respondents cannot be held liable, the CMO's lost about 10% of their value in the first six months, but their reduction in price did not affect the basic reasons Claimant made these investments as they still provided good income and were rated AAA. Respondents next maintained that these investments have made up a portion of their losses and Claimant's decision to hold on to the investments after he witnessed a

fluctuation in principal was his. Respondents denied that there was ever an offer to repurchase the securities from Claimant at the original price. Respondents further maintained that occasionally there are small deviations from the price on the statement and when Claimant initially inquired about the price, he was informed of this and thereafter, told of the correct current value.

RELIEF REQUESTED

Claimant requested damages in the sum of \$46,000.00 plus attorneys' fees, interest and costs of the proceeding.

Respondents requested a dismissal of all claims against them in their entirety.

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 and post hearing submissions (if any), 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.
2. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$1,000.00 (2 sessions x \$500.00 per session).

1. The Claimant is hereby assessed \$1,000.00 for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$500.00.
2. The NASD shall retain the \$150.00 nonrefundable 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/

Jacob I. Levine

Public

/S/

Amy D. Dickinson

Public

/S/

James C. Devine

Industry

November 4, 1996

Date of Decision: _____