

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Howard B. and Noreen Wernick

95-01319

Name of Respondents

Neil Bearce
Bryson Caldwell Cook
Smith Barney Inc. f/k/a Shearson Lehman Brothers Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 15, 1995, Claimants Howard B. and Noreen Wernick, who appeared Pro Se, alleged that Respondents Neil Bearce ("Bearce"), Bryson Caldwell Cook ("Cook"), and Smith Barney Inc. f/k/a Shearson Lehman Brothers Inc. ("Smith Barney"), recommended Claimants to sell their conservative FNMA investments and purchase Shearson Utilities Fund Class B. Claimants further alleged that Respondents sold them an investment whose high risk and unpredictable return was unsuitable for Claimants objective of safe and conservative investments. Claimants contended that Respondents failed to give them full disclosure, either verbally or in writing, at all the implications involved with purchasing this investment, including deferred sales charges and potential return on investment. Claimants further contended that as a result of the wrongdoing of the Respondents, they have suffered a loss for which the Respondents should be held liable.

Respondents Neil Bearce, Bryson Caldwell Cook, and Smith Barney Inc., through in-house counsel, Linda Alpert, Esq., maintained that Claimants were notified by Respondent Bearce verbally and in the prospectus and confirmations of all parameters for the investment in question, including deferred sales charges and commissions. Respondents further maintained that Claimants have forfeited their right to reparation by failing to abide by the express language on the relevant confirmations, which states that any objections must be stated immediately. Respondents contended that the Utilities Fund in question was a suitable investment for Claimants and, in fact, was more conservative than investments such as limited partnerships and precious metal funds previously purchased for Claimants' IRA. Respondents further contended that Claimants have not only rejected Respondents' good faith attempt to settle without litigation, but have also failed in their attempt to convince NASD District Enforcement staff that any sales practice violation had occurred. Respondents maintained that they committed no wrongdoing, and therefore, they should not be held liable in this matter.

RELIEF REQUESTED

Claimants Howard B. and Noreen Wernick, requested \$4,828.00 in actual damages.

Respondents Smith Barney Inc., Bryson Caldwell Cook and Neil Bearce requested that the claims of the Claimants be dismissed in their entirety.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, K. Leonard Judson, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Howard B. and Noreen Wernick, on March 27, 1995, and by the Respondent Neil Bearce, on August 17, 1995, by Respondent Bryson Caldwell Cook, on September 11, 1995, and by Respondent Smith Barney Inc. on September 11, 1995.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Respondents Neil Bearce and Smith Barney Inc., are jointly and severally liable, and shall pay to the Claimants Howard B. and Noreen Wernick, \$861.75 in actual damages.
2. The Respondents Neil Bearce and Smith Barney Inc., are jointly and severally liable, and shall pay to the Claimants Howard B. and Noreen Wernick, simple interest at the rate 8.5% per annum from December 28, 1995 to the date of payment of the Award.
3. The Claims of the Claimants Howard B. and Noreen Wernick against Respondent Bryson Caldwell Cook are dismissed in their entirety.
4. The parties shall bear their respective costs.
5. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Howard B. and Noreen Wernick, shall be retained by the NASD, Inc. The Respondents Neil Bearce and Smith Barney Inc., are jointly and severally liable, and shall pay to the Claimants Howard B. and Noreen Wernick, \$125.00 as reimbursement of the filing fee.

AFFIRMATION

STATE OF *Arizona*

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ss:

COUNTY OF *Maricopa*

I, *K. Leonard Judson*, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

K. Leonard Judson

Signature of Arbitrator

DATE OF DECISION:

February 27, 1996