

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

W. David Mello, M.D., Trustee of the W. David Mello
Smith Barney Prototype Profit Sharing Plan

NASD Arbitration
No. 95-01768

Name of Respondent(s)

Smith Barney Shearson, Inc. and Michael D. Berger

REPRESENTATION

For Claimant: H. Thomas Fehn, Esq.
Fields, Fehn & Sherwin
Los Angeles, California

For Respondent: Sean J. Coughlin, Esq.
Smith Barney, Inc.
New York, New York

CASE INFORMATION

Statement of Claim filed: April 10, 1995

Claimant's Submission Agreement signed: March 28, 1995

Joint Statement of Answer filed by Respondents: June 30, 1995

Respondent Smith Barney Shearson Inc.'s Submission Agreement signed: June 29, 1995

Respondent Michael D. Berger's Submission Agreement signed: June 23, 1995

HEARING INFORMATION

Hearing Date / Sessions: March 21, 1996 (2 sessions)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant alleged that Respondents recommended an unsuitable security and acted in reckless disregard of Claimant's investment objectives by recommending a high risk security. Additionally, Claimant alleged that Respondent misrepresented the nature of the risk involved with the recommended security.

Respondents denied each of the Claimant's allegations.

RELIEF REQUESTED

Claimant requested compensatory damages of \$70,000.00 plus interest, arbitration costs and attorney's fees.

Respondents requested dismissal of all claims and an award of costs of arbitration.

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. Respondent Smith Barney Shearson, Inc. is liable for and shall pay the sum of \$10,000.00 to Claimant.
2. Respondent Michael D. Berger is liable for and shall pay the sum of \$20,000.00 to Claimant.
3. The parties shall each bear their respective costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, forum fees are assessed against Smith Barney Shearson, Inc. as follows:

Two Hearing Sessions @ \$500.00 / session	=	\$1,000.00
Total Forum Fees assessed	=	\$1,000.00
Claimant's Credit for Hearing Session Deposit	=	\$500.00
Claimant's Refund Due	=	\$500.00
Respondent Smith Barney Shearson, Inc.'s Share of Forum Fees	=	\$1,000.00
Respondent Smith Barney Shearson, Inc.'s Balance Due	=	\$1,000.00

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Chet Olsen	Public Arbitrator
Maurice Schwarz, Jr.	Industry Arbitrator
Thornton V. Allen, Jr.	Public Arbitrator

Concurring Arbitrators' Signatures

Chet Olsen

Maurice Schwarz, Jr.

Thornton V. Allen, Jr.

Date of Decision: _____