

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimants**

Noelita and Matthew McGlinchey

95-01774

**Name of Respondents**

Smith Barney Shearson, Inc.  
John F. Braca

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on April 11, 1995, Claimants Noelita and Matthew McGlinchey ("Claimants"), who appeared Pro Se, alleged that Respondents Smith Barney Shearson, Inc. ("SBS"), and John F. Braca ("Braca"), engaged in trading securities in their account at SBS which were excessively risky for the financial circumstances of the Claimants. Claimants further alleged that Respondents excessively traded securities in their account. Claimants contended that the Respondents did not consult the Claimants regarding the excessive trading and that the value of the account on December 31, 1993, was \$58,685.06 while the sales within the account for 1994 were \$571,898.87. Claimants further contended that many of the Respondent's stock purchases were held for less than thirty days. Claimants alleged that as a result of the above, they have suffered a loss for which the Respondents should be held liable.

Respondents Smith Barney Shearson, Inc., and John F. Braca, through their representative and in-house counsel, Ann Parry, Esq., located in New York, NY, maintained that the Claimants' initial investment strategy with SBS was conservative but that strategy changed to accepting a higher risk after incurring some losses in 1991. Respondents further maintained that Braca did not have discretion over the Claimants' account and only traded with authorization from the Claimants. Respondents contended that as a result of the Claimants' trading strategy, the account was profitable in 1992 and 1993, and became unprofitable in 1994. Respondents further contended that the Claimants were sent monthly account statements indicating the account activity and yet never made a complaint until there were losses in 1994. Respondents maintained that as a result of the above, they should not be held liable.

**RELIEF REQUESTED**

Claimants Noelita and Matthew McGlinchey, requested \$9,340.17 in actual damages.

Respondents Smith Barney Shearson, Inc., and John F. Braca, requested that the claims of the Claimants be dismissed.

**AWARD**

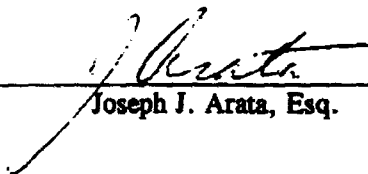
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Joseph J. Arata, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Noelita and Matthew McGlinchey, on April 6, 1995, and by the Respondent Smith Barney Shearson, Inc., on July 21, 1995, and not by the Respondent John F. Braca, as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

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 claims of the Claimants Noelita and Matthew McGlinchey, against Respondents Smith Barney Shearson, Inc., and John F. Braca, are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. All other relief requests are denied.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Noelita and Matthew McGlinchey, shall be retained by the NASD, Inc.

**AFFIRMATION**

I, JOSEPH J. ARATA, ESQ., 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.

  
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Joseph J. Arata, Esq.

DATE OF DECISION: October 18, 1995