

AWARD

**NASD, Regulation, Inc.,
Office of Dispute Resolution**

In the matter of the Arbitration Between

NASD Regulation, Inc.
No. 95-01806

Claimant

LaRue Bean

vs.

Respondents

Smith Barney Inc.
Richard Holbrook

REPRESENTATION OF PARTIES

For Claimant: Jack J. Orr, Esq., Harris, Orr & Wakayama, Seattle, Washington

For Respondents: John Bevilacqua, Esq., Smith Barney Inc., New York, New York

CASE INFORMATION

Statement of Claim filed April 12, 1995

Claimant's Submission Agreement signed: May 2, 1995

Joint Statement of Answer filed: September 18, 1995

Respondents' Submission Agreements signed:

Smith Barney: September 28, 1995

Richard Holbrook: September 13, 1995

HEARING INFORMATION

Pre-hearing telephone conferences were held as follows:

December 24, 1996 - 1 session

January 6, 1997 - 1 session

A motions hearing lasting 2 sessions was held in Seattle, Washington, on January 8, 1997.

The evidentiary hearing was held in Seattle, Washington, on April 29, 1997, and lasted 2 sessions.

CASE SUMMARY

Claimant alleged lack of suitability, breach of fiduciary duty, violation of the Washington state securities act (RCW 21.20.010, RCW 21.20.430(1) and RCW 21.20.430(3), negligence, common law fraud, negligent misrepresentation, failure to supervise, breach of contract and violation of the Washington consumer protection act (RCW 19.86). Claimant alleged she justifiably relied on Respondents and their representations and expected them to employ a conservative investment program consistent with her needs, when, in fact, a substantial number of the investments were illiquid, provided unneeded tax shelter benefits, were not secure and were subject to substantial fluctuations in value. Claimant also alleged the complexity of the investment strategies and her own lack of investment sophistication made it impossible to determine the true state of her account. Claimant alleged she invested in a variety of securities, including municipal bonds, tax-exempt unit investment trusts, bond funds, common stocks and limited partnerships.

Respondents denied all allegations of wrongdoing, and stated that claimant made all final investment decisions after full discussion with Respondent Holbrook and her accountant. Respondents further stated that the decline in Claimant's account value was caused by Claimant writing checks in her account and charging purchases on her account credit card.

Respondents asserted that all claims but that for breach of fiduciary duty were barred by Washington statutes of limitations, that the Washington consumer protection act claim failed to satisfy the public interest requirement and that all investments other than four investments which were purchased in late 1987 and 1988 were ineligible for arbitration because they were made more than six years before the claim was filed.

RELIEF REQUESTED

Claimant requested damages of \$500,000, plus return of commissions paid, lost opportunity costs, treble actual damages and attorney's fees under RCW 19.86, costs of arbitration and attorney's fees.

Respondents requested dismissal of all claims.

OTHER ISSUES CONSIDERED AND DECIDED

This claim was originally filed on October 25, 1991 in the Superior court of the State of Washington, King County, Case No. 91-2-23919-3. By court order dated September 22, 1992, the Hon. Jerome Johnston stayed the action pending binding arbitration.

After hearing oral argument on January 8, 1997, the undersigned arbitrators granted in part Respondents' motion to dismiss pursuant to Section 10304 of the Code of Arbitration Procedure, limiting the claim to those four investments purchased after February 25, 1987.

The arbitrators also granted in part Respondents' motion to dismiss pursuant to applicable statutes of limitations, leaving only the breach of fiduciary duty claims, the breach of contract claims and consumer protection act claims. The panel requested briefing on these claims. Prior to hearing, the panel dismissed the breach of contract claims.

At hearing, Claimant withdrew the consumer protection act claims.

AWARD

At the conclusion of the presentation of Claimant's case on April 29, 1997, after considering the pleadings, the testimony and the evidence presented, Respondents renewed their motion to dismiss the only remaining claim for breach of fiduciary duty based on statutes of limitations grounds. After argument, the panel granted the motion and dismissed the claim.

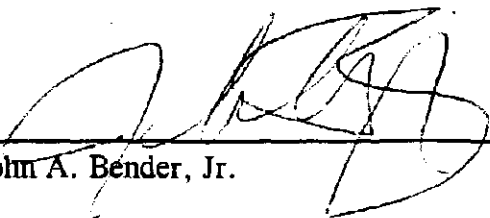
Additionally, Respondent moved to either expunge this matter from Richard Holbrook's permanent NASD record (CRD) or, in the alternative, to place a notation on the record that no wrongdoing was found to have been committed by Mr. Holbrook. Claimant had no objection, and the panel granted the motion.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, Claimant's \$250 non-refundable filing fee will be retained and the \$600 hearing session will be retained as an assessment of forum fees.

Concurring Arbitrators Signatures:

Date signed:



John A. Bender, Jr.

May 18, 97

John F. Cockburn

Bonny Kathleen Riggs

Date Served: 05/21/97