

## **AWARD**

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

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In the matter of the Arbitration Between

NASDR Arbitration  
No.95-02726

Claudine St. Avalos (Purves)

Claimant

vs.

Smith Barney, Inc.  
John Delahaye

Respondent

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## **REPRESENTATION**

For Claimant: Dennis John Woodruff, Esq., Oakland, California

For Respondent: Ben Suter, Esq., and Julie L. Taylor, Esq., Keesal, Young & Logan, San  
Francisco, California

## **CASE INFORMATION**

Statement of Claim filed: June 5, 1995

Amended Statement of Claim filed: August 30, 1996

Claimant's Submission Agreement signed: June 1, 1995

Joint Statement of Answer filed: August 8, 1995

Joint Answer to Amended Claim filed: November 29, 1996

Respondents' Submission Agreement signed:

Smith Barney: August 2, 1995

John Delahaye: August 2, 1995

## **HEARING INFORMATION**

The evidentiary hearing was held in San Francisco, California, as follows:

December 17, 1996	-	2 sessions
December 18, 1996	-	2 sessions
December 19, 1996	-	2 sessions
January 8, 1997	-	2 sessions
January 9, 1997	-	2 sessions
January 23, 1997	-	3 sessions

### CASE SUMMARY

Claimant alleged that after her marriage to her late husband, they set up a living trust into which they intended to transfer all their assets, and that her late husband executed a new will with "pour-over provisions" directing his entire estate be transferred to Claimant as surviving trustee, and that the trust assets were to be distributed according to the terms of the trust in the event the creation or funding of the trust failed for any reason. Claimant alleged Respondent Delahaye was instructed to transfer the assets from the late Mr. Purves' individual account into the trust accounts. The assets included four annuities purchased through Respondent Delahaye at a total cost of \$1,418,518.00 and each payable to the Estate of David Purves. After the death of Mr. Purves, Claimant was informed that the annuities had not been registered in the name of the trust. The annuities were liquidated by the Special Administratrix of the Estate and the funds reinvested in a proprietary municipal money market fund.

Claimant alleged that upon the discharge of the Special Administratrix, she consulted with Respondent Delahaye concerning the investment of the money market funds in safe, non-speculative investments. Claimant alleged Respondent Delahaye recommended and effected an investment of approximately \$400,000.00 without authorization, in unsuitable closed end mutual funds.

Claimant alleged losses suffered as a direct or foreseeable result of these activities. Claimant alleged breach of fiduciary duty and negligence with respect to the failure to re-register the annuities in the name of the trust and the failure to advise Claimant and her late husband of the need to sign change-of-beneficiary forms to name the Trust as beneficiary. Claimant further alleged failure to disclose surrender charges on annuities which were unnecessarily rolled over.

Respondents denied the allegations of wrongdoing, and stated that Claimant did not complain until May 1995 of activities in 1990, 1991, 1992 and 1993. Respondents alleged that the late Mr. Purves did not instruct Mr. Delahaye to transfer or change the beneficiary of the annuities. Respondents further asserted that it was clear that the late Mr. Purves did not intend for Claimant to have access to all his assets via the trust. With respect to the rollover of the annuities, Respondents asserted that one of the rollovers occurred before Claimant had even met her late husband, and further that Claimant was not present at the meetings during which Respondent Delahaye discussed the annuities with Mr. Purves.

### **RELIEF REQUESTED**

Claimant requested damages of over \$1,000,000.00, plus interest.

Respondents requested dismissal of all claims.

### **OTHER ISSUES CONSIDERED AND DECIDED**

At the conclusion of the presentation of Claimant's case, Respondents made a motion for non-suit. After argument on the motion, the panel deliberated and determined to grant the motion with respect to the claims concerning non-disclosure of surrender charges on the annuities and negligence related to the failure to transfer the annuities into the name of the trust. The hearing then continued on the remaining claims.

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 originals remain on file with the NASDR.

### **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. All claims asserted by the Claimant are dismissed in their entirety.
2. The parties shall bear their respective costs, including attorneys' fees.

### **FORUM FEES**

Pursuant to Section 10332 of the Code of Arbitration Procedure, the NASDR shall retain the \$250.00 non-refundable filing fee paid by Claimant, but shall refund the \$1000.00 hearing session deposit.

All forum fees are assessed to Respondents, jointly and severally:

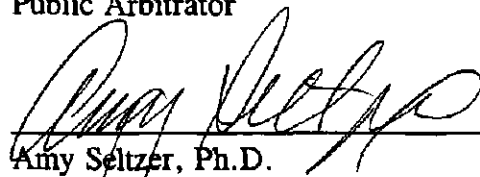
13 hearing sessions @ \$1000/session	\$13,000.00
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Fees are payable to the National Association of Securities Dealers Regulation, Inc.

Concurring Arbitrators Signatures:

Date signed:

\_\_\_\_\_  
Thomas C. McNally, III, Esq.  
Presiding Chairperson  
Public Arbitrator

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Amy Seltzer, Ph.D.  
Public Arbitrator

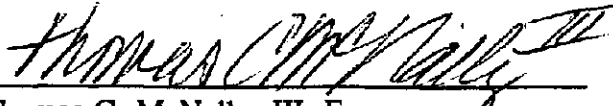
\_\_\_\_\_  
Frank Weaver  
Securities Industry Panelist

\_\_\_\_\_  
2/19/97  
\_\_\_\_\_

Date served: 2/24/1997

Concurring Arbitrators Signatures:

Date signed:

  
\_\_\_\_\_  
Thomas C. McNally, III, Esq.  
Presiding Chairperson  
Public Arbitrator

2-14-97

\_\_\_\_\_  
Amy Seltzer, Ph.D.  
Public Arbitrator

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Securities Industry Panelist

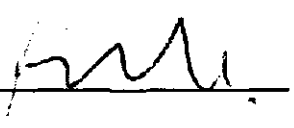
Date served: 2/24/1997

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Thomas C. McNally, III, Esq.  
Presiding Chairperson  
Public Arbitrator

\_\_\_\_\_  
Amy Seltzer, Ph.D.  
Public Arbitrator

  
\_\_\_\_\_  
Frank Weaver  
Securities Industry Panelist

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2/14/97

Date served: 2/24/1997