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NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

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Securities Dealers, Inc.

Oscar Ortega Perez and
Jose Antonio Ortega Perez

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and

NASD CASE NUMBER 95-03023

Name of Respondent

Smith Barney, Inc.

REPRESENTATION OF PARTIES

Claimants, Oscar Ortega Perez and Jose Antonio Ortega Perez, were represented by Ross Spence, Esq. of Crady, Jewett & McCulley, L.L.P. located in Houston, Texas.

Respondent, Smith Barney, Inc., was represented by Alejandro Schwed of the law department of Smith Barney, Inc. located in New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about June 20, 1995.

The Submission Agreement of Claimants was signed on June 17, 1995.

The Statement of Answer of Respondent was filed on or about August 11, 1995.

The Submission Agreement of Respondent was signed on May 11, 1995 by Alejandro Schwed, Vice President.

HEARING INFORMATION

A pre-hearing conference was held on March 7, 1996 for one (1) pre-hearing session before one arbitrator.

The hearing was held in Houston, Texas on the following dates:

March 13, 1996 for two (2) hearing sessions

March 14, 1996 for two (2) hearing sessions
March 15, 1996 for two (2) hearing sessions

CASE SUMMARY

In the Statement of Claim, Oscar Ortega Perez and Jose Antonio Ortega Perez (the "Ortegas") contend that Smith Barney, Inc. ("Smith Barney"), by and through its representative, Linda Mobayed ("Mobayed"), committed material misrepresentations and omissions, negligence, deceptive trade practices, breach of contract, breach of fiduciary duty, failure to execute orders, unauthorized trading, and violations of U.S. and Mexican securities statutes, in Smith Barney's handling of the Ortegas' account. As alleged, Smith Barney represented to the Ortegas that their money would be invested in safe U.S. fixed-income securities. As alleged, Smith Barney invested the Ortegas' money primarily in high-risk Smith Barney mutual funds investing in Mexican peso-denominated bonds called Mexico Short-Term Investment Portfolio and the Mexico Premium Income Portfolio. The Ortegas alleged that trades were not discussed with the them and prospectuses were not provided. The Ortegas contended that when the Ortegas learned the true nature of the investments Smith Barney was making, Smith Barney insisted that the Ortegas not sell these funds, making false representations and refusing to execute trades in the process. The Ortegas were allegedly holding peso-based funds when the Mexican government suddenly devalued the peso and suffered a net loss of \$215,391.82.

In its Answer, Smith Barney, Inc. denied all allegations of wrongdoing contained in the Statement of Claim. Smith Barney asserted that the Claimants were provided prospectuses for both mutual funds prior to the investments and that Claimants had regular contact with Mobayed during which Claimants appeared satisfied with the investments. Smith Barney claimed that the Ortegas were suitable for the investments since they were multi-millionaire investors who could afford the risks. The Respondent contended that the Claimants authorized all transactions and that Mobayed followed Claimants' instructions to maintain their position in July, 1994 then to sell the funds in December, 1994. Smith Barney asserted many affirmative defenses including, but not limited to, failure to state a cause of action, the claims were barred by the statute of limitations, estoppel, waiver, ratification and failure to mitigate.

RELIEF REQUESTED

Oscar Ortega Perez and Jose Antonio Perez requested an award in the amount of \$232,308.56 for actual damages plus punitive

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damages in an undisclosed amount as well as costs, attorneys' fees, prejudgment interest and post-judgment interest.

Smith Barney, Inc. requested that the Statement of Claim be dismissed and that it be awarded its costs.

OTHER MATTERS CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in 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(s) remain on file with the NASD.

During the hearing, Claimants made a motion for the panel to consider and admit Mexican Statutory Securities Law. After hearing oral arguments on the motion, the motion was denied.

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, Inc. is hereby liable for and shall pay to the Claimants, Oscar Ortega Perez and Jose Antonio Ortega Perez the sum of \$106,899.37 in compensatory damages as well as pre-judgement interest at the rate 6% per annum from July 26, 1994 until the date the award is served on the parties by the NASD;
2. Respondent, Smith Barney, Inc. is liable for and shall pay to the Claimants, Oscar Ortega Perez and Jose Antonio Ortega Perez post-judgement interest at the rate of 10% per annum from the date the award is served on the parties by the NASD until date paid;
3. Any relief not specifically granted herein is hereby denied; and
4. The parties shall bear their own costs including attorneys' fees except for those specifically enumerated herein.

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FORUM FEES

Pursuant to Section 43 (c) of the Code of Arbitration Procedure, the following forum fees are assessed:

six (6) hearing sessions x \$750.00 plus one (1) pre-hearing session x \$300.00 = **\$4,800.00**

The National Association of Securities Dealers, Inc. ("**NASD**") shall retain the \$200.00 claim filing fee and the \$750.00 hearing session deposit previously submitted by the Claimants. Respondent, Smith Barney, Inc. is liable for and shall pay to the Claimants, Oscar Ortega Perez and Jose Antonio Ortega Perez the sum of \$950.00 as reimbursement. Respondent, Smith Barney, Inc. is also liable for and shall pay to the NASD the amount of **\$4,050.00** in additional forum fees. The NASD shall also retain the \$350.00 member surcharge assessed pursuant to Section 45 of the Code which was previously paid by Smith Barney, Inc.

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

Concurring Arbitrators' Signatures:

Dated:

May 20, 1996

May 23, 1996

May 20, 1996

Date served by the NASD: May 30, 1996