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NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Paul C. Davis,
Nancy B. Davis

Claimants

NASD Arbitration
No. 95-03046

v.

*Smith Barney Shearson, Inc.,
R.J. Bernstein

Respondents

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REPRESENTATION OF PARTIES

Paul C. Davis and Nancy B. Davis ("Claimants") was represented by David R. Clark, Esq., Higgs, Fletcher & Mack, San Diego, California.

Smith Barney Shearson, Inc. and R.J. Bernstein ("Respondents") were represented by Marian Chan, Esq., Smith Barney, Inc., New York, New York.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about June 22, 1995. Claimants' Submission Agreement was signed on June 14, 1995.

Smith Barney Shearson, inc. and R.J. Bernstein's Joint Statement of Answer was filed on or about August 14, 1995. The Submission Agreement for Smith Barney Shearson, Inc. was signed on August 14, 1995. The Submission Agreement for R.J. Bernstein was signed on July 31, 1995.

HEARING INFORMATION

The hearing was held July 2 and 3 in San Diego, California for a total of 3 sessions.

CASE SUMMARY

Claimants alleged that the Respondents breached their fiduciary duty to the Claimant by failing to follow their stated investment objectives of safety of principal, income and growth to the extent that the principal would not be at risk. Claimants further alleged that the Respondents executed unauthorized trades, failed to execute trades on behalf of the Claimants and consistently sold the Claimants imprudent and speculative securities.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically argued that the Claimants were experienced investors who were dissatisfied with their previous investment advisor and the return on their portfolio and were specifically looking to increase their return and were aware of the risks involved. Respondents **further** argued that the portfolio assembled were diversified and met the Claimants stated investment objectives of both growth and safety of principal. Additionally, Respondents argued that each trade was discussed with the Claimants prior to execution and that no unauthorized trading took place in the Claimants account.

RELIEF REQUESTED

Claimant requested an award in the amount of \$30,000 in actual damages and \$30,000 in lost income. Claimants also requested unspecified damages for emotional distress, interest, and attorney's fees.

Respondent requested that the claims asserted against it be denied in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. 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. **Respondents**, jointly and severally, are liable and shall pay to Claimants the sum of **\$66,200.00** in damages.
2. Respondents, jointly and severally, are liable and shall pay to Claimants the sum **\$25,000.00** in attorney's fees as provided for in item (5) paragraph 3 of Smith Barney's Trustee Certification of Investment Powers document.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each prehearing conference, if any. There were 3 sessions x \$500 = \$1,500 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four

1607202

NASD Arbitration No. 95-03046

Award Page 3 of 3

(4) hours or less. Pursuant to § 43(c) of the Code of Arbitration Procedure, all forum fees are assessed against the Respondents, jointly and severally.

Total Fees	
3 Hearing Sessions @ \$500.00 =	\$1,500.00
Total	<u>\$1,500.00</u>

Respondents' credit for deposit	<u>\$ -0.00-</u>
Respondents' Balance	\$1,500.00

Pursuant to §43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$150 and shall refund the hearing session deposit in the amount of \$500 previously deposited with the NASD by the Claimant Paul C. Davis and Nancy B. Davis.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$300 previously paid by Smith Barney, Inc.

The NASD shall retain postponement fees in the amount of \$500 previously deposited with the NASD by the Respondents.

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

Dated:

Guenter S. Cohn, Esq.
Public Arbitrator, Presiding Chair

Virginia H. Wertz
Public Arbitrator

Amellia H. Beattie
Industry Arbitrator

Date Served: 07/31/96

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NASD Arbitration No. 95-03046
Award Page 3 of 3

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