

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Angelo Gulino

95-03421

Name of Respondent

Smith Barney Shearson, Inc.

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**REPRESENTATION**

Claimant Angelo Gulino ("Claimant") was represented by Thomas Martin, Esq., Philadelphia, PA.

Respondent Smith Barney Shearson, Inc. ("Respondent") was represented by Christine Tracey, Associate General Counsel, New York, NY.

**CASE INFORMATION**

Claimant's Statement of Claim was filed July 17, 1995.

Claimant's Uniform Submission Agreement was signed July 12, 1995.

Respondent's Statement of Answer was filed September 12, 1995.

Respondent did not submit an executed submission agreement.

**HEARING INFORMATION**

Prehearing Date/Sessions: May 22, 1996/one session

Hearing Date/Sessions: June 5, 1996/two sessions

Hearing Location: Vincent Varallo Associates, Inc.  
Philadelphia, PA

**CASE SUMMARY**

Claimant alleged, among other things, unsuitable and unauthorized securities transactions, fraud, misrepresentation and failure to supervise, all constituting a breach of fiduciary duty. Claimant alleged that due to termination of Claimant's employment, Claimant would be eligible to transfer in a lump sum, monies held in the employer's qualified retirement plans, into an individual retirement account. Claimant alleged that Respondent solicited Claimant and induced Claimant to transfer to Respondent \$254,529.00 on January 19, 1993 and \$94,783.13 on March 1, 1993. These funds represented Claimant's entire retirement portfolio. Claimant had no prior investment experience. Therefore, Claimant alleged that Claimant reasonably relied upon Respondent's misrepresentations concerning the future security of Claimant's assets. Claimant alleged that Respondent had been informed of Claimant's conservative

investment strategy to preserve capital and general sufficient income to satisfy Claimant's retirement needs. Claimant alleged that when Claimant questioned transactions which were not listed in the financial plan which Respondent had developed for Claimant, Respondent fraudulently assured Claimant that the securities purchased were the equivalent of those described in the financial plan. Claimant alleged that the securities purchased by Respondent were high risk and unsuitable for Claimant's investment strategy. Claimant alleged that Respondent was negligent in the supervision of the management of Claimant's account. Claimant alleged that Respondent's actions resulted in financial losses for which Respondent should be liable.

Respondent denied the allegations contained in the Statement of Claim. Respondent maintained that Claimant directed and authorized all transactions in Claimant's account. Respondent maintained that all securities obtained in the transactions in Claimant's account were consistent with Claimant's investment objectives, as well as Claimant's financial experience and background. Respondent maintained that Claimant expressly, and impliedly, represented to Respondent that Claimant understood the risks of the investments made and assumed the risks of those investments. Respondent maintained that Claimant received written confirmations as well as monthly statements on Claimant's account. Respondent maintained that the confirmations and statements inform the Claimant to contact the Respondent if Claimant objects to any investment. Respondent maintained that Claimant did not object to any of the transactions. Respondent maintained that any losses in Claimant's account were attributable in whole or in part to market fluctuations and Respondent is not liable for these losses.

#### **RELIEF REQUESTED**

Claimant requested damages in an amount equal to the difference between a reasonable rate of return on the account and the amount actually received; return of all commissions; reimbursement for all losses; pre-award interest from the date of the loss; reasonable attorney's fees and punitive damages.

Respondent requested that the Statement of Claim be dismissed.

#### **OTHER ISSUES CONSIDERED & 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 originals remain on file with the NASD.

That pursuant to the by-laws of the NASD, the panel determined that Respondent was required to submit to this arbitration, notwithstanding the failure to submit an executed Submission Agreement. Therefore, Respondent is bound by the panel's rulings and determinations.

**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 is liable to and shall pay to Claimant the sum of \$10,000.00 inclusive of interest.
2. The request for punitive damages is denied.
3. Each party shall bear its own expenses.
4. Any and all relief not specifically addressed herein is denied.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

1 Prehearing Session x \$300.00 =	\$ 300.00
2 Hearing Sessions x \$750.00 =	\$1,500.00

<b>TOTAL FORUM FEES</b>	<b>\$1,800.00</b>
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Forum Fees are assessed to Respondent. Respondent is liable to and shall reimburse Claimant for the \$750.00 hearing session deposit previously submitted to the NASD. Therefore, Respondent has a net assessment to the NASD of \$1,050.00.

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

**DATE**

**CONCURRING ARBITRATORS' SIGNATURES**

6/20/96

Allen Kilik  
Allen Kilik, Presiding  
Public Arbitrator

\_\_\_\_\_  
Roy B. Steenhoff  
Public Arbitrator

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Jerry Brown  
Industry Arbitrator

Date Decision Served by NASD: June 24, 1996

**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:

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Allen Kilik, Presiding  
Public Arbitrator

6/22/96

Roy B. Steenhoff  
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Public Arbitrator

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Jerry Brown  
Industry Arbitrator

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