

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Richard and Cynthia Dolsey

95-03854

Name of Respondents

Smith Barney Shearson, Inc.  
Jan Deborah Michelson

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REPRESENTATION

For Claimants, Richard and Cynthia Dolsey ("the Dolseys"): Margaret Brodsky, Esq., of Miami, Florida.

For Respondents, Smith Barney, Inc. ("Smith Barney") and Jan Deborah Michelson ("Michelson"): Linda A. Alpert, Esq. of Smith Barney, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: 8/1/95.

Claimant's Submission Agreement signed on: 7/31/95.

A Joint Statement of Answer filed by Respondents, Smith Barney and Michelson on: 9/28/95.

Respondent, Smith Barney's Submission Agreement/Corporate Acknowledgment signed on: 9/28/95 (by Linda R. Alpert on behalf of the firm).

Respondent, Michelson's Submission Agreement signed: 9/11/95.

HEARING INFORMATION

Hearing Dates/Sessions: 8-1-96/two (2) sessions.

Hearing Location: Fort Lauderdale, Florida.

### CASE SUMMARY

Claimants alleged that in August, 1992, their Miami home and all of its contents were destroyed by Hurricane Andrew; that, subsequently, in December, 1992, they received a settlement from their insurance company of \$638,000.00 to rebuild and refurnish the house; that originally, they intended to place these funds in a bond, in certificates of deposit of staggered maturity and that their objective was to keep these moneys safe, but also to have them in a form sufficiently liquid to allow withdrawals as needed to make progress payments to their contractor and other suppliers over the eighteen months to two years projected for rebuilding the house; that they also wanted these funds to generate a reasonable rate of income while they were being held. Claimants stated that their Smith Barney financial adviser persuaded them to place the funds with her rather than in a bank, on the basis that she would respect all of their investment objectives and also procure a greater rate of return on the money than the Dolseys could receive from bank certificates; that Claimants had an established relationship with the advisor, Respondent, Michelson, as manager of their other investment account (including their children's trust accounts and Richard Dolsey's office pension plan account), entrusted \$600,000.00 of their insurance proceeds to Michelson; that, notwithstanding her promises to respect Claimants' objectives, as well as her alleged awareness that the complexity of their lives in the period of rebuilding after the hurricane would preclude their close monitoring of the account at issue, Michelson placed them in unsuitable investments which, by the time the investments were liquidated and the account closed in late 1994 to meet the final payments for rebuilding the house, had resulted in net losses of slightly over \$40,000.00.

Respondents denied all allegations of wrongdoing and denied liability for Claimants' alleged losses and maintained that Michelson gave Claimants a choice of several investments to choose from, including money market funds, CD's, floaters, pre-refunded bonds and a NYSE-traded Nuveen municipal bond fund; that Michelson explained the risks and rewards of each investment, and Claimants willingly chose to invest in the pre-refunded bonds and Nuveen in order to obtain the highest tax-exempt yield possible; that Claimants made their own investment decisions, including what to buy, how much to buy, when to sell, and how much to sell; that Claimants received a prospectus for the Nuveen fund which disclosed all material facts and risks; that Michelson also discussed the investments with Claimant's accountant, Howard Amdur, who received copies of the account statements and confirmations from March 1993 forward; that the investments in the pre-refunded bonds and Nuveen met their objectives of tax-free income and appreciation. Respondents further stated that Claimants received confirmations and account statements, and failed to mitigate their alleged loss, which was due to market fluctuations and to their own decision to sell out; that Claimants are responsible for their own economic decisions, and cannot make Respondents into insurers against loss and that their claims should be dismissed.

### RELIEF REQUESTED

Claimants requested reimbursement for losses in their account in excess of \$40,000.00 plus costs of this proceeding and reasonable attorney's fees.

Respondents requested that the Statement of Claim be dismissed and that costs be assessed against Claimants.

**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.

**AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Smith Barney, is found liable and shall pay to the Claimants the amount of \$26,692.30.
2. Respondent, Michelson, is found not liable and, therefore, all claims against her are hereby dismissed.
3. Claimants' requests for costs and attorney's fees are hereby denied.
4. Respondents' request for costs is hereby denied.

**OTHER COSTS**

Apart from the Forum Fees addressed below, the parties shall each bear their own costs and expenses incurred in connection with this proceeding, including attorneys' fees.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the Arbitrators have assessed Forum Fees in the amount of \$800.00 (two hearing sessions X \$400.00).

1. Respondent, Smith Barney, shall pay Forum Fees in the amount of \$800.00, \$400.00 of which shall be paid directly to the Claimants and the remaining \$400.00 shall be paid to the NASD, Inc.
2. The NASD shall retain both the \$400.00 hearing session deposit and the \$120.00 non-refundable filing fee paid by the Claimants.
3. The NASD shall retain the \$200.00 member surcharge paid by Respondent, Smith Barney.

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

**ARBITRATION PANEL**

**Concurring Arbitrators' Signatures**

Name

Public/Industry

/s/

\_\_\_\_\_  
Evan Langbein, Esq.

Public/Panelist

/s/

\_\_\_\_\_  
Gustavus L. Pearthree

Industry/Panelist

**Dissenting Arbitrator's Signature**

/s/

\_\_\_\_\_  
Gary M. Landau, Esq.

Public/Chairman

(Arbitrator, Gary M. Landau, dissented in this decision only with respect to liability).

Date of Decision: September 18, 1996