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N.A.S.D. AWARD

9605/97

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Daniel Phillips
Maria Phillips

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95-03957

Name of Respondent

Smith Barney Shearson, Inc.

REPRESENTATION

Claimants Daniel and Maria Phillips ("Claimants") were represented by David F. Albright, Esq. and Cynthia E. Rodgers-Waire, Esq., Albright, Brown, & Caudill, Baltimore, MD.

Respondent Smith Barney Shearson, Inc. ("Smith Barney") was represented by Ann Parry, First Vice President, Smith Barney Inc., New York, NY.

CASE INFORMATION

The Statement of Claim was filed on August 10, 1995.
Claimants' Submission Agreement was signed on August 11, 1995.

Respondent's Statement of Answer was filed on October 9, 1995.
Respondent's Submission Agreement was signed on October 10, 1995..

HEARING INFORMATION

Hearing Dates/Sessions: May 2, 1996/two sessions

Hearing Location: Doubletree Hotel
Baltimore, Maryland

CASE SUMMARY

Claimants alleged that Respondent, in response to Claimants' requests for recommendations for conservative investments, recommended that both Claimants use Individual Retirement Account (IRA) funds to purchase shares (Class B) in Alliance North American Governmental Income Trust Inc. Claimants alleged that Claimants had not invested in securities or mutual funds before, and were seeking safe investments. Claimants alleged they were advised by Respondent that investment in the shares was risk-free and that the full return of capital was guaranteed. Claimants, who were investing funds derived from maturing bank certificates of

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deposits, and which represented substantially all of their retirement savings, contended such representations and assurances were made both at the time of the investments and on later occasions. Claimants alleged that the acts of Respondent constituted a breach of contractual or fiduciary duties to the customers, and that the investments were unsuitable or inappropriate, and that Respondent should be responsible for losses incurred with respect to the mutual fund shares.

Respondent denied making any misrepresentations or engaging in any other improper actions. Respondent denied the existence of a fiduciary duty with respect to the Claimants' non-discretionary accounts. Respondent further denied that the investments were unsuitable, and contended that risk factors concerning the investments were appropriately disclosed. Respondents maintained that Claimants received copies of the mutual fund prospectus and were informed orally by Respondent's account executive for the Claimants, James D. Wise. Respondent maintained that any loss suffered by Claimants were the result of Claimants' actions and market fluctuations.

RELIEF REQUESTED

In their Statement of Claim, Claimants requested compensatory damages of \$9,500.00 for each Claimant; punitive damages of \$5,000.00 for each Claimant; as well as attorney fees and interest. At the hearing, Claimants submitted an amended damages calculation of \$6,554.63 on behalf of Claimant Daniel J. Phillips, and \$5,800.09 on behalf of Claimant Maria J. Phillips.

In their Answer to the Statement of Claim, Respondent requested that the claims be dismissed, and that Respondents have an award in its favor. Respondent argued at the hearing that if any award were to be issued in favor of the Claimants, the award should not exceed \$ 2,996.50 for Daniel J. Phillips and \$ 2,676.97 for Claimant Maria J. Phillips.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

OTHER COSTS

Respondent Smith Barney is assessed \$30.00 for the facility charge for the speaker telephone for use with Respondent's witness testifying via telephone conference call.

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AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Under the circumstances of these investments, including the nature of the investments, the knowledge and sophistication of the customers, and the investment of substantially all of the retirement funds of both spouses in a single mutual fund, the investments recommended to, and made for the Claimants were unsuitable to their needs and circumstances. The **claims** as to unsuitability are sustained.
2. The Claimants' claims, including claims of misrepresentations, are in all other respects denied. Claimants' requests for punitive damages, attorney fees, and other relief are also denied.
3. Respondent is liable to and shall pay to Claimant Daniel J. Phillips the amount of \$ 6,450.00.
4. Respondent is liable to and shall pay to Claimant Maria J. Phillips the amount of \$ 5,675.00.

FORUM FEES

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

2 Sessions x \$300.00 = \$600.00

Forum Fees are assessed against Respondent. Respondent is liable to and shall reimburse Claimant for the \$300.00 hearing session deposit previously submitted to the NASD. Therefore, the Respondent has a net assessment due to the NASD of \$300.00.

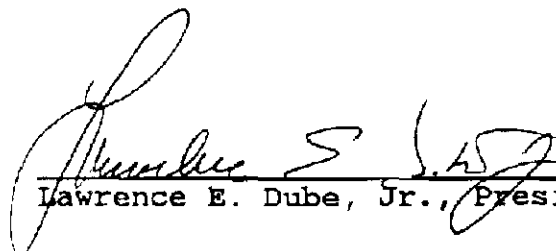
Fees are payable to the National Association of Securities Dealers,, Inc.

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DATE

ARBITRATOR'S SIGNATURE

5/17/96


Lawrence E. Dube, Jr., Presiding

Date Decision Served by NASD: May 21, 1996