

## **AWARD**

**NASD, Regulation, Inc.,  
Office of Dispute Resolution**

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In the matter of the Arbitration Between

NASD Regulation, Inc.  
No. 95-04046

Claimants

DeLaine D. Richards

vs.

Respondents

Smith Barney, Inc.  
Lance Sweet

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### **REPRESENTATION OF PARTIES**

For Claimant: William M. Bankston, Esq., Bankston & McCollum, P.C., Anchorage, Alaska

For Respondents: William A. Hohausser, Esq., Smith Barney, Inc., New York, New York

### **CASE INFORMATION**

Statement of Claim filed: August 22, 1995

Claimant's Submission Agreement signed: July 24, 1995

Joint Answer filed: October 20, 1995

Respondents' Submission Agreements signed:

Smith Barney, Inc.: October 29, 1996

Lance Sweet verbally acknowledged his submission to NASD jurisdiction at the first hearing session on May 15, 1997.

### **HEARING INFORMATION**

Pre-hearing telephone conferences were held as follows:

October 1, 1996	-	1 session
November 18, 1996	-	1 session

The evidentiary hearing was held in Seattle, Washington, pursuant to the agreement of the parties, as follows:

May 15, 1997	-	2 sessions
May 16, 1997	-	1 session

### **CASE SUMMARY**

Claimant alleged breach of fiduciary duty, professional negligence, fraud and deceit, negligent misrepresentation, excessive trading, respondeat superior, and violations of federal and Alaska state securities laws with respect to investments recommended and effected by Respondents (after the initial investments, about which there is no complaint) in common stocks and bond funds.

Respondents denied the allegations of the claim, and denied that Claimant sustained losses in her account. Respondents stated that changes to Claimant's portfolio were made in response to Claimant's expressed desire for higher yields from her investments. Respondents stated that each transaction was thoroughly discussed with Claimant before execution, and that all investments met Claimant's account objectives of long-term conservative investments with income.

### **RELIEF REQUESTED**

Claimant requested damages of approximately \$105,000, plus interest, punitive damages, costs of arbitration and attorneys' fees.

Respondents requested dismissal of all claims.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Motion by Respondents to refer expert witness C. Thomas Mason, III, CEBS, CFP, for DBCC review of disingenuous testimony was heard. While the panel finds his opinion testimony had little substantive basis, and failed to conform with generally accepted standards, referral to DBCC is inappropriate. Motion is denied.

The parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASDR.

### **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. All claims, including the claim for punitive damages, are dismissed in their entirety.
2. The parties shall each bear their respective costs, including attorney' fees.

### **FORUM FEES**

Pursuant to Section 10332 of the Code of Arbitration Procedure, the NASDR shall refund all Claimant's fees in the amount of \$950.

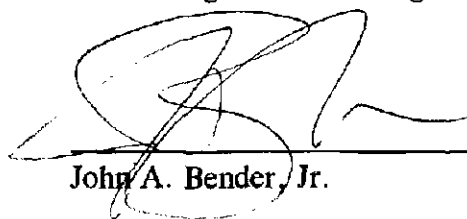
Respondent Smith Barney is assessed filing and forum fees as follows:

Filing fee	\$200
2 pre-hearing telephone conferences @ \$300/session	600
3 hearing sessions @ \$750/session	<u>2250</u>
Total due	\$3050
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**Fees are payable to the National Association of Securities Dealers Regulation, Inc.**

Concurring Arbitrators Signatures:

Date signed:

  
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John A. Bender, Jr.

3 June 97

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David M. Gaba

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Blake Weston

Date Served: 06/09/97