

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Name of Claimant(s)

Berit B. Miller

Arbitration
No. 95-04337

Name of Respondent(s)

Smith Barney Inc., also known as
Shearson Lehman Hutton;
George Peterson; and
Kim Mastel

Kim Mastel

REPRESENTATION

For Claimant: David A. Tallant, Esq., Rancho Cordova, California

For Respondents: Sean J. Coughlin, Esq., Smith Barney Inc., New York, New York

CASE INFORMATION

Statement of Claim filed: September 8, 1995

Claimant's Submission Agreement signed: August 25, 1995

Joint Statement of Answer filed by Respondents on or about:
January 16, 1996

Respondents did not file Submission Agreements. However, they appeared at hearing and are subject to NASD Regulation, Inc. (NASDR) jurisdiction in accordance with Section 10301 of the NASDR Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s): July 23, 1997 (two sessions)

Hearing Location: San Francisco, California

CASE SUMMARY

Claimant alleged that Respondents breached their fiduciary duty as investment advisors and brokers to Claimant in allowing the withdrawal of funds within thirty days of opening Claimant's account, said funds being delivered to a third party, George Wilson, such that Claimant lost her complete portfolio and funds to live on for the rest of her life.

Respondents denied Claimant's allegations of wrongdoing. Respondents alleged that on March 27, 1990, Berit Miller executed a Security Account Third Party Limited Discretionary Authorization Form (Discretionary Authorization Form) in which she authorized George Wilson to act as her agent and attorney-in-fact. The Discretionary Authorization Form was properly notarized, as Kim Mastel notarized the form only after Berit Miller provided Mastel with appropriate identification; and that although there was no requirement to do so, the Discretionary Authorization Form was filled out, signed, and notarized at a meeting attended by Berit Miller, George Wilson, George Peterson, and Kim Mastel. Respondents further alleged that subsequent to the execution of the Discretionary Authorization Form, Berit Miller provided a signed Letter of Authorization (LOA) in which she authorized George Wilson to pick up her checks; these checks were payable only to Berit Miller; unlike the Discretionary Authorization Form, the signature on the LOA is not required to be notarized or guaranteed; and that after receiving the LOA, Smith Barney promptly and properly processed the checks requested by the LOA. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested an award which restores to her the value of her portfolio, plus interest. Claimant alleged that when she

transferred the portfolio to Respondents it was valued at \$778,250.00; and that after Mr. Wilson's unauthorized withdrawals, the account was worth approximately \$10,000.00. Claimant further requested the sum of \$768,250.00, plus interest.

Respondents requested dismissal of Claimant's claims and requested costs, including reasonable attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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 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 by Claimant, including any claims for punitive damages, are dismissed.

2. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASDR shall refund Claimant's hearing session deposit in the amount of \$1,300.00. Forum fees shall be assessed against Smith Barney Inc., solely, in the amount of \$2,000.00, calculated as follows: Two hearing sessions times \$1,000.00.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
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Bruce T. Mitchell, Esq.

Public Arbitrator

John B. Reilley, Esq.

Public Arbitrator

Neil G. Clem

Industry Arbitrator

Concurring Arbitrators' Signatures


Bruce T. Mitchell, Esq.

 John B. Reilley, Esq.

 Neil G. Clem
Date of Decision: 8/23/1997

Date served: 8/19/1997

ARBITRATORS

Name _____ Public / Industry

Bruce T. Mitchell, Esq.

Public Arbitrator

John B. Reilley, Esq.

Public Arbitrator

Neil G. Clem

Industry Arbitrator

Concurring Arbitrators' Signatures_____
Bruce T. Mitchell, Esq._____
John B. Reilley, Esq._____
Neil G. Clem

Date of Decision: _____

Date served: 8/19/1997

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Public Arbitrator

John B. Reilley, Esq

Public Arbitrator

Neil G. Clem

Industry Arbitrator

Concurring Arbitrators' Signatures

Bruce T. Mitchell, Esq.

John B. Reilley, Esq.

Neil G. Clem

Date of Decision: 7/23/97

Date served: 8/19/1997