

**AWARD**

NASD Regulation, Inc.

In the matter of the Arbitration Between

Name of Claimant(s)

Norbert Lechwar, Trustee for and on behalf  
of the Joseph F. Stoller Trust

Arbitration  
No. 95-04364

Name of Respondent(s)

Smith Barney Shearson Inc.  
Gordon P. Sinkoff

**REPRESENTATION**

For Claimant: Patricia J. Ulibarri, Esq. and Ronald V. LoLordo,  
Esq., San Diego, California

For Respondents: John P. Bevilacqua, Esq., Smith Barney Inc., New  
York, New York

**CASE INFORMATION**

Statement of Claim filed: September 7, 1995

Answer of Claimant to Respondent's Counterclaim filed: April 17,  
1996

Amendment to Answer of Claimant to Respondent's Counterclaim filed:  
May 20, 1996

Claimant's Submission Agreement signed: September 25, 1995

Joint Statement of Answer and Counterclaim filed by Respondents:  
January 19, 1996

Amended Answer and Counterclaim filed by Respondents: January 24, 1996

Respondents' Submission Agreements signed as follows:

Smith Barney Shearson Inc., also known as Smith Barney Inc.:

January 19, 1996

Gordon P. Sinkoff: June 4, 1996

#### HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

February 12, 1997 (one session)

February 13, 1997 (one session)

Hearing Date(s)/Session(s): July 17, 1996 (two sessions)

July 18, 1996 (two sessions)

July 19, 1996 (two sessions)

February 19, 1997 (two sessions)

Hearing Location:

San Diego, California

#### CASE SUMMARY

Claimant presented his statement of claim to NASD Regulation, Inc. (NASDR), as indicated by "STATEMENT OF CLAIM" typed above the caption of a copy of San Diego Superior Court Case No. 680745, NORBERT LECHWAR, Trustee for and on behalf of the JOSEPH F. STOLLER TRUST vs. SMITH BARNEY SHEARSON, a Delaware Corporation, GORDON SINKOFF, individually, MARCELLA STOLLER, individually, and DOES 1 through 50, inclusive. The statement of claim consisted originally of seven causes of actions: 1) Negligence; 2) Breach of Contract; 3) Breach of Fiduciary Duty) 4) Book Account; 5) Conversion; 6) Undue Influence; and 7) Fraud. During the hearing, Claimant advanced other theories of recovery including "loss of use of funds"; "know your customer" (NASDR Article III, Section 2); "failure to supervise"; and "due diligence" (NYSE Rule 405).

Respondents denied all allegations of wrongdoing and alleged that Claimant is entitled to no relief whatsoever. Respondents further alleged that Claimant's allegations that Respondents were negligent or breached their fiduciary duty in the handling of the Joseph Stoller Trust account pursuant to the directions of the

Trustee are without merit and should be dismissed. Respondents also asserted affirmative defenses.

The Counter-Claimant, Smith Barney Shearson Inc., sought damages for attorneys' fees and costs incurred in the underlying action brought in San Diego Superior Court, Case No. 680745, supra. Counter-Claimant retained the California law firm of Keesal, Young & Logan and incurred attorney's fees and costs to this firm in the amount of \$18,526.91. Counter-Claimant also requested an additional award of \$1,100.00 as and for its filing fee.

Claimant denied any liability with respect to Respondents' counterclaim and alleged that the issues concerning the counterclaim have been decided in a previous civil action. Claimant also asserted affirmative defenses.

#### **RELIEF REQUESTED**

Claimant, Norbert Lechwar, Trustee, sought damages as presented in his Exhibit 107 (bate stamped 000001-000004) with the deduction of the sum of \$90,000.00.

Counter-Respondent Norbert Lechwar, Trustee, requested that Smith Barney Shearson Inc. take nothing by way of its counterclaim.

Respondents, Smith Barney Shearson Inc. and Gordon Sinkoff, requested that Claimant take nothing by way of his statement of claim as filed and fully presented at the hearing.

Respondent, Gordon Sinkoff, further requested that the NASDR be ordered to expunge this claim from his record.

Counter-Claimant Smith Barney Shearson Inc., sought a total monetary award of \$19,626.91.

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

The above-captioned matter was initially filed in Superior Court of California, County of San Diego, case number 680745. On or about March 21, 1995, the court proceedings were stayed and this matter was ordered into arbitration.

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 the NASDR.

The NASDR is hereby ordered to expunge all claims brought by Norbert Lechwar, Trustee of the Joseph F. Stoller Trust, against Respondent Gordon Sinkoff.

#### AWARD

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

1. The claims of Norbert Lechwar, Trustee of the Joseph F. Stoller Trust, against Smith Barney Shearson Inc., a Delaware Corporation, and Gordon Sinkoff, individually, having been duly presented and heard; the arbitrators having received and reviewed all oral and documentary evidence presented by the parties; and further, the arbitrators having duly deliberated, HEREBY DENY all claims in Claimant's statement of claim, including any claims for punitive damages, and including any and all claims submitted during the arbitration hearing.

2. The counterclaim of Smith Barney Shearson Inc. against Norbert Lechwar, Trustee of the Joseph F. Stoller Trust, having been duly presented and heard; the arbitrators having received and reviewed all oral and documentary evidence presented by the parties; and further, the arbitrators having duly deliberated, HEREBY AWARD to counter-claimant and against counter-respondent, the sum of Eighteen Thousand, Five Hundred Twenty-Six Dollars and Ninety-One Cents (\$18,526.91). This award is for attorneys' fees incurred by counter-claimant as a result of San Diego Superior Court Case No. 680745. No costs are awarded to counter-claimant.

3. The award shall bear interest at the legal rate of ten percent (10%) per annum from the date of this award.

4. This award shall become final ten (10) days after service by mail on the parties, unless a party requests, in writing to

NASDR, a hearing regarding only the issue of the award of attorneys' fees to counter-claimant. In the event that a hearing is requested by a party, the panel shall set the date and time of the hearing and establish a schedule for the parties to brief issues to be presented at the hearing.

5. 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: Forum fees shall be split between Claimant and Respondent Smith Barney Shearson Inc., and are calculated as follows:

Two pre-hearing sessions @ \$300.00/session	=	\$ 600.00
Eight hearing sessions @ \$1,000.00/session	=	<u>\$8,000.00</u>
Total fees assessed	=	\$8,600.00
Claimant's share (50%)	=	\$4,300.00
Credit for hearing deposit	=	\$1,000.00
Balance due	=	\$3,300.00
Smith Barney Shearson Inc.'s share (50%)	=	\$4,300.00
Credit for hearing deposit	=	\$ 600.00
Balance due	=	\$3,700.00

Fees are payable to NASD Regulation, Inc.

#### ARBITRATORS

Name ..... Public / Industry

Douglas Stenzel, Esq.

Public Arbitrator

Edward W. Burnett

Public Arbitrator

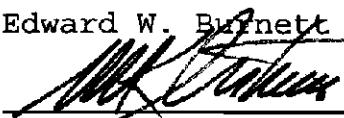
Walter W. Klosterman

Industry Arbitrator

Concurring Arbitrators' Signatures

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Douglas Stenzel, Esq.

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Edward W. Burnett

  
\_\_\_\_\_  
Walter W. Klosterman

Date of Decision: 5/14/97

Date Served: June 2, 1997

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