

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Bourgeois Construction Inc. Profit Plan

95-04779

Name of Respondent

Smith Barney Shearson, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 10, 1995 Claimant Bourgeois Construction Inc. Profit Sharing Plan ("Claimant"), through its representative Ron Bourgeois ("Bourgeois"), who appeared Pro Se, alleged that Respondent Smith Barney Shearson, Inc. ("Respondent"), through its representative Guy W.L. Dietrich ("Dietrich"), recommended that Bourgeois, through it exchange shares of Claimant's GT Global Government Income Fund B ("GT Income"), for shares of Claimant's Global Developing Markets Fund, Inc. ("Developing Markets"). Bourgeois further alleged that he followed Respondent's recommendation and that he had been told there would be no sales charge yet the Respondent's fee was assessed. Bourgeois contended Dietrich admitted the sales charge was a mistake and that all attempts Bourgeois made to negotiate with the Respondent concerning this matter were unsuccessful. Bourgeois further contended that as a result of the above, he has suffered a loss for which the Respondent should be held liable.

Respondent Smith Barney Shearson, Inc., through its representative and in-house counsel, Ann Parry, Esq., maintained that Claimant purchased 12,304 shares of GT Income on March 29, 1993 with the understanding that a back-end fee would be assessed upon sale of the shares. Respondent further maintained that shortly before Christmas of 1994, Claimant decided to switch his shares for another fund because of his growing disenchantment with GT Income. Respondent contended that Dietrich was unaware of, and therefore, never discussed the back-end fee issue prior to the switch. Respondent further contended that after the trade Claimant told Dietrich that he thought the switch was not subject to the fee and suggested that Respondent pay for the fee. Respondent maintained that should the fee not be assessed, the Claimant would receive undue benefits, therefore, it offered to reverse the trade. Respondent maintained that Claimant refused to surrender his Developing Markets shares insisting that Respondent pay for the fee. Respondent further maintained that Claimant subsequently changed his position and now desires a rescission because the GT Income shares have significantly outperformed the Developing Markets shares. Respondent contended that Claimant is attempting to enrich himself at its expense and is not interested in an equitable solution. Respondent further contended that, as a result of the above, it should not be held liable.

RELIEF REQUESTED

Claimant Bourgeois Construction Inc. Profit Sharing Plan, requested a rescission of the disputed trades, a credit of \$4,099.69 as reimbursement of the back-end fee, interest and costs.

Respondent Smith Barney Shearson, Inc., requested that the claims of the Claimant be dismissed.

AWARD


Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Barry H. Barnett, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on September 29, 1995, and by the Respondent on November 21, 1995.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Respondent Smith Barney Shearson, Inc. is liable and shall pay to Claimant Bourgeois Construction Inc. \$5,629.19 in actual damages.
2. The Respondent Smith Barney Shearson, Inc. is liable and shall pay to Claimant Bourgeois Construction Inc. an amount equal to all earnings paid on 12,304 shares of GT Global Government Income Class B from December 22, 1994 to January 16, 1995. Earnings include but are not limited to, interest, dividends, funds share splits and capital gains.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.
5. All other relief requests are denied.

AFFIRMATION

I, BARRY H. BARNETT, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


Barry H. Barnett, Esq.

DATE OF DECISION: April 19, 1996