

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the matter of the Arbitration Between

Name of Claimant

Ronald C. Betten

v.

NASD Arbitration  
No. 95-05441

Name of Respondents

Smith Barney, Inc. f/k/a Smith Barney, Harris, Upham & Co. Inc.

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**REPRESENTATION**

For Claimant:

Bruce R. Safran, Esq.  
Law Offices of Bruce R. Safran  
Tarzana, California

For Respondents:

Scott E. Kretsch, Esq.  
Smith Barney, Inc.  
New York, New York

**CASE INFORMATION**

Statement of Claim filed:

November 16, 1995

Claimant's Submission Agreement signed:

November 13, 1995

Joint Statement of Answer filed by Respondents:

May 31, 1996

Respondents' Submission Agreement signed:

May 29, 1996

### **HEARING INFORMATION**

Hearing Dates / Sessions:

December 3, 1996 (3 Sessions)  
December 4, 1996 (2 Sessions)  
December 5, 1996 (3 Sessions)  
December 6, 1996 (2 Sessions)

Hearing Location:

Los Angeles, California

### **CASE SUMMARY**

Claimant alleged that Respondent violated the terms of his employment contract. Claimant further alleged that Respondent breached the terms of the employment benefit plan and tortiously interfered with Claimant's business relationship with Claimant's institutional clients.

Respondent denied the allegations of wrongdoing found in the Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant sought compensatory damages of \$3,563,362.00, attorney's fees of \$1,187,787.00, plus interest and costs of arbitration.

Respondent requested that the Claimant's Statement of Claim be dismissed in its entirety.

### **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 original remains on file with the NASD.

### **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. Respondent is liable to and shall pay Claimant the sum of \$439,715.06 for compensatory damages and attorney's fees.
2. Except as noted above, the parties shall each bear their respective costs, including attorney's fees.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed against Respondent as follows:

Ten hearing sessions @ \$1,000.00/Session	=	\$10,000.00
Total Fees Assessed against Respondent	=	\$10,000.00


Claimant's hearing session deposit will be refunded by the NASD.


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

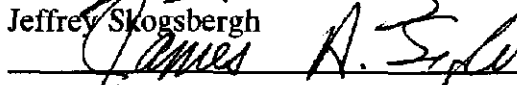
### ARBITRATORS

Name	Public / Industry
Leo Rotter.....	Industry Arbitrator
Jeffrey Skogsbergh.....	Industry Arbitrator
James Sigler.....	Industry Arbitrator

### Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Leo Rotter

  
\_\_\_\_\_  
Jeffrey Skogsbergh

  
\_\_\_\_\_  
James Sigler

Date of Decision: 12/6/96

Date of Service: 12/6/96

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the matter of the Arbitration Between

**Name of Claimants**

PKB Construction, Inc., Boulder Construction, Inc. and PKB Construction, Inc. Profit Sharing Plan

v.

NASD Arbitration  
No.95-05455

**Name of Respondents**

Santa Barbara Securities, Inc., John S. Weymouth, Carl E. Lindros, Sandra Carver Rubenstein and Richard A. Kieding

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**REPRESENTATION**

For Claimants:

Irwin G. Stein  
Investors Recovery Service  
Novato, California

For Respondents:

Victor G. Zilinskas, Esq  
Law Offices of Victor G. Zilinskas  
San Bernardino, California

**CASE INFORMATION**

Statement of Claim filed:

November, 17, 1995

Claimants' Submission Agreements signed:

February 15, 1996

Joint Statement of Answer filed by Respondents:

May 17, 1996

Respondents' Submission Agreement signed:

none filed

### **HEARING INFORMATION**

Pre-Hearing Conference Date / Session: November 13, 1996 (1 session)

Hearing Dates / Sessions: November 25, 1996 (2 sessions)  
November 26, 1996 (2 sessions)

Hearing Location: Los Angeles, California

### **CASE SUMMARY**

The Claimants alleged four primary causes of action against the Respondents regarding the private placement solicitation and sale of \$350,000.00 to Claimants in 1991 and 1992 of Promissory Notes issued by Towers Financial Corporation and marketed by the Respondents: (1) Negligent misrepresentation; (2) Intentional misrepresentation and Fraud; (3) Breach of Fiduciary Duty and Duty of Fair Dealing, including failure to have a reasonable basis to offer the securities; and (4) violation of statutory provisions regarding private placement offerings. Claimants further alleged that the Respondents negligently and fraudulently misrepresented the investment in the promissory notes and the management background of Towers Financial Corporation. Claimants alleged that Respondents had no reasonable basis for offering the promissory notes to Claimants, and that the private placement offering was in violation of federal and state laws.

Respondents denied the allegations of wrongdoing asserted by the Claimants.

### **RELIEF REQUESTED**

Claimants sought damages of \$350,000.00 with interest from the date of investment. In the alternative, the Claimants sought rescission of their investment of \$350,000.00 with interest thereon since the date of investment. Claimants also sought costs of arbitration, and punitive or exemplary damages.

Respondents requested that all of Claimants' claims be denied, that Claimants take nothing thereby and that Respondents be awarded costs of arbitration, including fees and expenses.

### OTHER ISSUES CONSIDERED AND DECIDED

Terrence Hammond was removed as a party from the arbitration as he was not named as a Respondent in the Statement of Claim.

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 original remains on file with the NASD.

Respondents' Motion to Dismiss is denied.

The Panel dismissed with prejudice Respondent Sandra Carver Rubenstein during the hearing on the merits.

### 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 the Claimants' claims, including claims for punitive damages, are denied in their entirety.
2. The parties shall each bear their respective costs, including attorney's fees.

### FORUM FEES

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

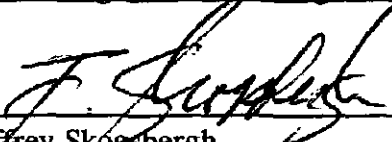
One (1) Pre-Hearing Conference @ \$300.00/Session	= \$300.00
<u>Four (4) Hearing Sessions @ \$750.00/Session</u>	<u>= \$3,000.00</u>
Total Forum Fees Assessed	= \$3,300.00
 Claimants' One-Half Share	 = \$1,150.00
<u>Claimants' Credit for Hearing Session Deposit</u>	<u>= \$750.00</u>
Claimants' Balance Due	= \$400.00
 <u>Respondents' One-Half Share</u>	 <u>= \$1,150.00</u>
Respondents' Balance Due	= \$1,150.00

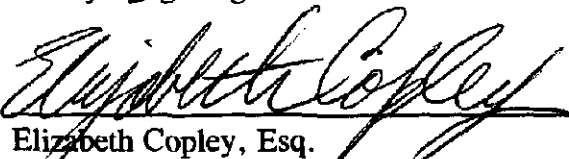
Fees are payable to the National Association of Securities Dealers, Inc.

**ARBITRATORS**

<u>Name</u>	<u>Public / Industry</u>
Jeffrey Skogsbergh	Industry Arbitrator
Elizabeth Copley, Esq.	Public Arbitrator
James Mulcahy, Esq.	Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Jeffrey Skogsbergh

  
\_\_\_\_\_  
Elizabeth Copley, Esq.

  
\_\_\_\_\_  
James Mulcahy, Esq.

Date of Decision: 11/27/96

Date of Service: 11/27/96