

NASD REGULATION AWARD

NASD REGULATION, OFFICE OF DISPUTE RESOLUTION

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In the Matter of the Arbitration Between

Name of Claimant

Kenneth N. Porterfield

NASD Regulation Case  
No. 95-05559

Name of Respondents

Smith Barney Shearson, Inc.  
The Estate of Stephen J. Schappell  
Mercer Securities, LTD  
Mercer Securities, Inc.  
Lawrence G. Stevens  
William Boyd, III

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**BEFORE:**

Theodore M. Simon, Esq., Public Arbitrator, Chair  
Mr. Frank T. Salera, Industry Arbitrator, Panelist  
Harold P. Starr, Esq., Public Arbitrator, Panelist

**REPRESENTATION**

Claimant Kenneth N. Porterfield ("Claimant") was represented by Merrit A. Cole, Esq. of the law firm of Dilworth, Paxson, Kalish & Kauffman, LLP, Philadelphia, PA.

Respondent Smith Barney, Inc. ("Smith Barney") was represented by Harry T. Walters, Senior Vice President, Associate General Counsel, Smith Barney, Inc., New York, NY.

Respondent William Boyd, III ("Boyd") was represented by Joseph F. Keenan, Esq. of the law firm of Bochar & Keenan, P.C., Garden City, NY.

Mr. Lawrence G. Stevens ("Stevens") represented himself.

The Estate of Stephen J. Schappell ("Schappell") made no appearance and was unrepresented.

Mercer Securities, Ltd. ("Mercer Securities") made no appearance and was unrepresented.

Mercer Securities, Inc. ("Mercer") made no appearance and was unrepresented.

**CASE INFORMATION**

Statement of Claim filed: November 22, 1995.

Claimant's Submission Agreement signed on: November 3, 1995.

Statement of Answer filed by Smith Barney on: January 26, 1996.  
Smith Barney did not sign a Submission Agreement.

Lawrence G. Stevens Statement of Answer filed on: April 9, 1996.  
Lawrence G. Stevens did not sign a Submission Agreement.

William B. Boyd, III filed his Statement of Answer on: December 28, 1995  
William B. Boyd, III's Submission Agreement signed on: December 27, 1995.

Respondents Schappell, Mercer Securities and Mercer did not file an answer or a submission agreement.

### HEARING INFORMATION

Hearing Dates/Sessions:      March 5, 1997 - two sessions  
   March 6, 1997 - two sessions  
   March 7, 1997 - two sessions  
   March 19, 1997 - two sessions  
   March 20, 1997 - two sessions  
   March 21, 1997 - two sessions

Hearing Location: American Arbitration Association and NASD Regulation District 9 offices, Philadelphia, PA

### CASE SUMMARY

Claimant maintained, at separate consecutive times over a period between 1989 and 1994, both an individual and a retirement brokerage account with the institutional respondents. Stevens and Stephen J. Schappell, now deceased, were his investment representatives during the times that he maintained accounts with each of these institutional respondents. Respondent Boyd was a principal of Respondents Mercer.

Claimant alleged, among other things, that Stevens and Schappell engaged in unauthorized trading and gave improvident advice for his accounts, that resulted in the purchase of unsuitable common stock and corporate bond investments which were contrary to Claimant's stated investment objectives. Claimant alleged that Respondents are responsible for Claimant's consequential losses. Claimant further alleged that Boyd knew, or should have known, that unsuitable transactions were taking place in Claimant's accounts, for which Boyd was responsible as a supervisor and principal of Respondents Mercer. Claimant avers violations of NASD Regulation Rules of Fair Practice, Pennsylvania Unfair Trade Practices and Consumer Protection Law, prevailing standards of the securities industry, as well as federal securities law and rules generally appertaining. Claimant also avers that Respondents were negligent in hiring Schappell, who Claimant claims was incompetent and disqualified as a result of a prior substance abuse conviction, and that this negligence contributed to his losses.

Respondents generally denied the claims and any wrongdoing, and affirmatively argued that Claimant both participated in and ratified, over an extended period of time, each and every transaction of which Claimant complained.

### RELIEF REQUESTED

Claimant sought to hold all Respondents jointly and severally liable for claimed losses of \$266,095, prejudgment interest, treble damages, punitive damages, and attorneys' fees and costs.

Smith Barney requested that the Statement of Claim be dismissed and that it be awarded the costs of this proceeding.

Stevens requested that Claimant's claim be dismissed.

Boyd requested that Statement of Claim be dismissed in all respects and all costs be assessed against Claimant.

### OTHER ISSUES CONSIDERED & DECIDED

Upon due notice, hearings were held in Philadelphia, Pennsylvania on March 5, 6, 7, 19, 20 and 21, 1997, at which time representatives of the parties appeared as hereinbefore indicated. The members of the arbitration panel were duly sworn. Full opportunity was afforded the parties to be heard, to offer evidence, and to examine and cross-examine witnesses. At the conclusion of the final hearing, the parties expressly stated that they had presented their respective cases in full, except for leave to inspect certain documents of Respondents Mercer Securities, Ltd. and Mercer Securities, Inc. located in a Philadelphia warehouse, the existence of which first became known during the hearings. Claimant was provided with the opportunity, of which he availed himself, to submit an offer of proof regarding any material evidence uncovered during that inspection, and the appearing Respondents replied to that offer of proof.

The parties have agreed that the Award in this matter may be executed in 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 NASD Regulation.

Respondents Smith Barney and Lawrence G. Stevens did not file a properly executed submission to arbitration with NASD Regulation, but did submit answers and participated in the hearings and all aspects of the case. Notwithstanding their failure to file submission agreement, the panel exercised its jurisdiction pursuant to the bylaws of the NASD and Rule 10301 of NASD Regulation's Code of Arbitration Procedure ("Code"), and Smith Barney and Stevens are bound by the rulings and determinations set forth below.

Mercer Respondents and the Estate of Steven G. Schappell neither filed answers nor participated in this arbitration. Notwithstanding their failure to participate, the Mercer respondents and Estate of Steven G. Schappell were required to submit to arbitration pursuant to the bylaws of the NASD and Rule 10301 of the NASD Code of Arbitration Procedure (the "Code"), and are bound by the determination of the panel on all issues submitted.

### AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, as well as the post hearing submissions and having further considered the Claimant's offer of proof and replies thereto, and accepting into evidence the documents referred to therein, and having further considered and denied further

hearing with respect to the offer of proof, the undersigned Arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimant's claim is denied in its entirety.
2. That Claimant's claim for punitive damages is denied in its entirety.
3. That the parties shall bear their respective costs, except as forum fees are addressed below.
4. That any and all claims for relief not specifically addressed above are denied in their entirety.

#### OTHER COSTS

Claimant was assessed a postponement fee of \$1,000 on July 11, 1996. That postponement fee remains unpaid.

#### FORUM FEES

Pursuant to Rule 10322(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

12 hearing sessions x \$1,000 = \$12,000

Claimant has deposited a hearing session deposit of \$1,000.

Claimant has also deposited a non refundable hearing session deposit of \$250.

Respondent Smith Barney was assessed a member surcharge pursuant to Rule 10333 which remains outstanding.

Assessed Forum Fees: 50% against Claimant. 16.67% against Smith Barney. 16.67% against Stevens and 16.67% against Boyd.

Claimant shall pay forum fees in the amount of \$6,000 and a postponement fee in the amount of \$1,000; however, Claimant is entitled to offset these amounts with his previously paid \$1000 hearing session deposit reducing his total outstanding fee assessment to \$6,000.

Respondents Smith Barney, Stevens and Boyd are each assessed forum fees in the amount of \$2,000.

Respondent Smith Barney shall also pay its member surcharge fee of \$350. Therefore, the total due from Smith Barney is \$2,350.

Fees are payable to the NASD Regulation, Inc.

Date Signed

Concurring Arbitrators' Signatures

7/1/97



THEODORE M. SIMON, Public Arbitrator  
Chairperson

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HAROLD P. STARR, Public Arbitrator  
Panelist

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FRANK T. SALERA, Industry Arbitrator  
Panelist

Date Award Served by the NASD Regulation:

July 7, 1997

Date Signed

Concurring Arbitrators' Signatures

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THEODORE M. SIMON, Public Arbitrator  
Chairperson

7/1/97

Harold P. Starr  
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HAROLD P. STARR, Public Arbitrator  
Panelist

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FRANK T. SALERA, Industry Arbitrator  
Panelist

Date Award Served by the NASD Regulation:

July 7, 1997

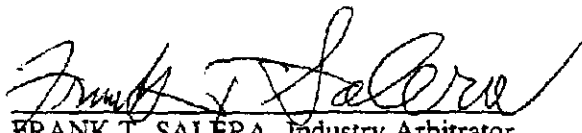
Date Signed

Concurring Arbitrators' Signatures

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THEODORE M. SIMON, Public Arbitrator  
Chairperson

\_\_\_\_\_  
HAROLD P. STARR, Public Arbitrator  
Panelist

7-2-97

  
FRANK T. SALERA, Industry Arbitrator  
Panelist

Date Award Served by the NASD Regulation:

July 7, 1997