

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Michael and Patricia Round

95-05716

Name of Respondents

Smith Barney n/k/a Smith Barney Shearson, Inc.  
Marshall C. McClean

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 6, 1995, Claimants Michael and Patricia Round ("Claimant"), who appeared Pro Se, alleged that Respondent Smith Barney Shearson, Inc. ("SBS") through its representative, Respondent Marshall C. McClean ("McClean"), assured them that their securities, arising from an inheritance and held by a Trustee in London, England, would be transferred to the United States in a timely manner. Claimants further alleged that in mid-September, 1994 they contracted to purchase a home which required a down payment of \$350,000.00 on November 9, money they expected to receive from the transfer of the securities in London. Claimants contended that they informed McClean about the purchase and that he assured them that the funds would be available in time for the closing. Claimants further contended that they relied on Respondents expertise and repeated assurances that the transfer was being processed as efficiently as possible. Claimants contended that between mid-September and early November, the Respondents mishandled the transfer of funds because, according to the former Trustee of the securities, the transfer should have taken only 10 days but was still not completed as of the early November closing and they were given inaccurate valuations of the securities. Claimants further alleged that as a result of the mishandling they were financially harmed because they had to take out a bridge loan to finance the purchase of the house until their funds cleared.

Respondents Smith Barney Shearson, Inc. and Marshall C. McClean through their representative and in-house counsel, Ann Parry, Esq., maintained that Michael Round ("M. Round") maintained an account with SBS and in September of 1994, he contacted McClean asking that he transfer recently inherited United Kingdom securities to his SBS account but did not then mention the purchase of a house. Respondents further maintained that John Bishop ("Bishop"), the former Trustee of the securities, was involved in the transfer taking care of tax issues which arose from the transfer. Respondents contended that because of tax problems the securities did not clear until October 13, 1994. Respondents further contended that while waiting for clearance, the SBS person in London assigned to work with Bishop and the procedure to make the transfer were changed by SBS. Respondents maintained that on October 11, 1994 M. Round first brought up the subject of needing the funds for a house closing but did not provide

an approximation of the closing date. Respondents further maintained that the cleared securities were sent via UPS to its Washington, D.C. office but clearance was delayed because the package was lost by UPS and after receipt of these securities it was determined that there were inconsistencies among some of the certificates which had to be corrected. Respondents contended that Claimants were kept informed and that they attempted to assist the Claimants with the financing of their closing but their efforts were rejected. Respondents further contended that as a result of the above, they should not be held liable.

### **RELIEF REQUESTED**

Claimants Michael and Patricia Round requested \$3,620.00 in closing costs, \$943.72 in interest paid plus any additional amount the arbitrator deems appropriate.

Respondents Marshall C. McClean and Smith Barney Shearson, Inc. requested that the claims of the Claimants be dismissed.

### **AWARD**

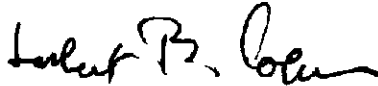
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Herbert B. Cohn, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on November 29, 1995 and by the Respondent Smith Barney Shearson, Inc. on February 12, 1996 and not by Respondent Marshall C. McClean as is required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

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 claims of the Claimants Michael and Patricia Round against Respondent Marshall C. McClean are denied in their entirety.
2. The Respondent Smith Barney Shearson, Inc. is liable and shall pay to the Claimants Michael and Patricia Round \$4,563.72 in actual damages.
3. The Respondent Smith Barney Shearson, Inc. is liable and shall pay to the Claimants Michael and Patricia Round \$436.28 as costs reasonably incurred in the filing of this matter.
4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. The Respondent Smith Barney Shearson, Inc. shall pay to the Claimants Michael and Patricia Round \$125.00 as reimbursement of the filing fee.

**AFFIRMATION**

I, **HERBERT B. COHN, 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.

A handwritten signature in cursive script, appearing to read "Herbert B. Cohn", is written above a horizontal line.

Herbert B. Cohn, Esq.

DATE OF DECISION: May 23, 1996

## **REPORT OF ARBITRATOR**

Smith Barney ("SB") accepted an assignment, relating to the liquidation of securities in London, with the implication that it would be carried out efficiently and expeditiously. It was not. The procedure initiated by McClean was modified on the advice of the D.C. Operations Manager (Askew) to call for the deposit of the securities in SB's London office. The London office was so advised and proceeded on that basis.

Subsequently, when the securities were presented at the London office, SB personnel stated that "recent changes [nowhere dated or explained] in Smith Barney policy prevented" deposit in the London office and that the securities should, instead, be sent to the D.C. office. This, in turn, led to delay in delivery and delay in discovering "inconsistencies among certain certificates" which, it appears likely, could have been discovered and corrected in London with much less loss of time. Finally, the SB information to Claimants on October 13, 1994 materially overstated the estimated proceeds of the securities based on figures provided by SB personnel in London, which could have been avoided by a more careful check and calculation by the London personnel.

These failures are attributable to the SB firm as a whole. Indeed, on the basis of the record available, it seems likely that McClean was misled by his SB colleagues and should not be held personally liable for any damages incurred. The record indicates that McClean did make an effort to expedite the transaction and to keep Claimants informed.