

**AWARD**  
**NASD Regulation, Inc.**

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In the Matter of Arbitration Between

Cathy B. Derr

Claimant,

and

No. 95-6075

Smith Barney, Inc. and

William B. Campbell

Respondents.

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**REPRESENTATION OF PARTIES**

Claimant, Cathy B. Derr., ("Derr"), was represented by Jeffrey E. Ritter of Mullin Hoard & Brown located in Amarillo, Texas.

Respondents, Smith Barney, Inc. and William B., Campbell, ("Respondents"), were represented by William A. Hohausser Vice-President and Associate General Counsel of Smith Barney, Inc.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on or about December 29, 1995. Claimant's Submission Agreement was signed on December 21, 1995.

Respondents' Joint Statement of Answer was filed on or about March 5, 1996. Respondent William B. Campbell's Submission Agreement was signed on March 1, 1996. Respondent Smith Barney, Incorporated's Submission Agreement on March 5, 1996 by William Hohausser, its First Vice President and Associate General Counsel.

**HEARING INFORMATION**

The hearing was held on November 10, 1999 for two (2) sessions and November 11, 1999 for two (2) sessions for a total of four (4) sessions in Dallas, Texas.

### **CASE SUMMARY**

Claimant alleged that she was an unsophisticated investor and therefore sought the advice of the Respondents that she believed to be a qualified brokerage firm and financial consultant to invest her life savings of money. She further stated that she did not expect guaranteed financial results but that she did expect and deserved to receive experienced investment advice. She alleged that rather than getting the sound investment advice she expected, she received many bad investments, clearly inconsistent with her objectives and needs, while providing substantial commission and margin interest compensation to Respondents Smith Barney and Campell.

Claimant asserted that she received a number of high risk speculative investments that declined in value substantially after purchase. She paid substantial commissions and margin interest and got poor advice at best. Claimant specifically alleged claims including unsuitability, unauthorized trading breach of contract, negligence and gross negligence, breach of fiduciary duty, Deceptive Trade Practices Act violations, and failure to supervise.

Respondents jointly denied any wrongdoing as alleged in the Claimants' Statement of Claim. Respondents asserted that Claimant's primary account was profitable, the fees charged were relatively low and any strain on the account were occasioned by Claimant herself. Respondents asserted that Claimant's investment goal was initially was to preserve principal while generating a moderate income annually.

Later, however Claimant began withdrawing significant sums of money which put a strain on the account. In connection with the increased spending by Claimant, Respondents Campbell explained the resulting prudent investment strategy of more aggressive investment and the greater risk involved in this type of investment. Further, Respondents allege that they took pains to diversify Claimants holdings by industry. The equities purchased were recommended for purchase by the Respondents research department based primarily upon fundamental strengths. Respondents submit that their recommendations were appropriate for Claimant given the constraints she placed upon her stockbroker. Respondents allege that Claimant received and rejected Respondents advice given in good faith and therefore assumed responsibility for any losses she incurred.

### **RELIEF REQUESTED**

Claimant Cathy B. Derr requested an award for compensatory damages in excess of \$100,000.00, double or treble damages, return of commissions, return of margin interest, pre and post award interest, attorneys fees and expenses.

Respondents jointly requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorney fees.

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

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 the NASD Regulation, Inc. Office of Dispute Resolution.

### **AWARD**

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

1. That the Respondents Smith Barney, Inc. and William B. Campbell are jointly and severally liable for and shall pay Claimant Cathy B. Derr compensatory damages in the amount of \$75,000.00 (seventy-five thousand dollars and no ones) and interest at the statutory rate in Texas on the award from December 29, 1995 until the award is paid in full;
2. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were four (4) hearing sessions x \$750.00 = \$3000.00 in forum fees. Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (the "Code,) a hearing session is any meeting between the parties and the Arbitrator(s), including a pre-hearing conference with an Arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, Claimant has paid to the NASD Regulation, Inc., Office of Dispute Resolution, the non-refundable filing fee of \$200.00 and has also paid the hearing session deposit of \$750.00. Respondents are jointly and severally liable for the remaining forum fees in this matter and shall pay the sum of \$2250.00 (\$3000.00 total due less Claimant's hearing session deposit of \$750.00) to NASD Regulation, Inc., Office of Dispute Resolution.

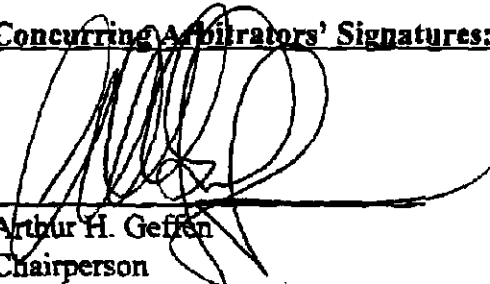
Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

**OTHER FEES**

Pursuant to Rule 10333 of the Code, Respondent, Smith Barney, Inc. has paid to the NASD Regulation, Inc., Office of Dispute Resolution, the \$350.00 member surcharge previously invoiced.

Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

**Concurring Arbitrators' Signatures:**

  
\_\_\_\_\_  
Arthur H. Geffen  
Chairperson  
Public Arbitrator

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Date 1/21/99

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John M. Greer  
Panelist  
Public Arbitrator

\_\_\_\_\_  
Date

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Sanford C. Cox  
Panelist  
Industry Arbitrator

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Date

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**OTHER FEES**

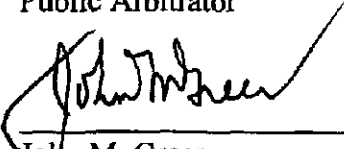
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Public Arbitrator

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Sanford C. Cox  
Panelist  
Industry Arbitrator

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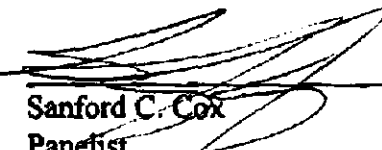
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11/22/99  
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Date