

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimant

Hoang Nguyen

96-00384

Name of Respondents

Smith Barney Shearson, Inc.
Steven D. Garber
Paul M. Hatch
John W. Sheehan
Irvin a. Cross

REPRESENTATION

Claimant Hoang Nguyen ("Claimant") was represented by Lisa P. Clesner, Esq., Silver Spring, MD.

Respondent Smith Barney Shearson, Inc. ("SBS"), Paul M. Hatch ("Hatch"), John W. Sheehan ("Sheehan") and Irvin A. Cross ("Cross") were represented by Etta Gumbs, Esq., Smith, Barney Shearson, Inc., New York, NY.

Respondent Steven D. Garber ("Garber") did not appear.

CASE INFORMATION

The Statement of Claim was filed January 26, 1996.

The Amended Statement of Claim was filed September 9, 1996.

Claimant's Uniform Submission Agreement was signed January 22, 1996.

The Joint Statement of Answer of SBS, Hatch, Sheehan and Cross (collectively "Respondents") was filed April 22, 1996.

SBS's Uniform Submission Agreement was signed April 22, 1996.

Hatch, Sheehan and Cross did not submit an executed agreement to arbitrate.

Garber did not file a Statement of Answer or an executed agreement to arbitrate.

HEARING INFORMATION

Prehearing Date/Sessions: September 5, 1996/one session

Hearing Dates/Sessions: September 17, 1996/one session
September 18, 1996/one session

Hearing Location: Holiday Inn
Baltimore, MD

CASE SUMMARY

Claimant, in an amended Statement of Claim at the hearing, alleged excessive trading in his account by Respondents. In addition, Claimant alleged that Respondents were negligent in their supervision of Garber. Claimant alleged that while he had an account with SBS for many years, he is an engineer and not a sophisticated investor. Claimant alleged that he reasonably relied on the representations made to him by Respondents. Claimant alleged that Respondents induced him to authorize excessive trades. Claimant alleged that the excessive trading was for the benefit of Respondents and not Claimant. Claimant alleged that while he was residing in Louisiana, Steve Garber, an SBS employee sold securities to him even though Garber was not licensed in Louisiana. Claimant alleged that Garber persuaded Claimant to authorize options trades even though Claimant had never signed an Options Agreement. Claimant alleged that SBS was negligent in their supervision of Garber. Claimant alleged that the actions of Respondents caused him financial loss for which SBS should be liable.

Respondents denied allegations of wrong doing. Respondents maintained the transactions which Claimant alleged constituted excessive trading in his account should be dismissed because many of the transactions occurred more than six years before the filing of this claim. In addition, Respondents maintained that all the transactions which Claimant alleged constitutes churning should be barred by the statute of limitations period set forth by the United States Supreme Court in *Lampf, Pleva, Lipkind, Prupis & Petigrew v. Gilbertson*, 111 S. Ct. 2773, 2782 (1991) for all claims under Section 10(b) of the Securities Exchange Act of 1934, including churning claims. Respondents maintained that Claimant ratified the trades in his account by failing to object to any trades or to any actions by Respondents. Respondents also raised the additional affirmative defenses of failure to state a claim upon which relief may be granted, estoppel, waiver and laches. Respondents maintained that any loss suffered by Claimant is the result of Claimant's own actions.

Garber did not file an Answer.

RELIEF REQUESTED

Claimant requested relief in the amount of \$98,768.00.

Respondents requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & 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.

Claimant withdrew all claims against Garber, Hatch, Sheehan and Cross prior to the hearing. The panel considered Claimant's request to amend his Statement of Claim at hearing, and Respondents' response thereto, and granted the request in part and denied it in part.

As Claimant had withdrawn all claims against Garber, the panel did not consider the issue of jurisdiction over Garber based on service and notice.

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. That Smith Barney Shearson, Inc. is liable to and shall pay to Claimant, the sum of \$2,200.00 plus six percent (6%) simple interest per annum from July 1, 1990 to September 18, 1996.
2. Each party shall pay its own costs and expenses, including attorney's fees.
3. Any relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332(c) (formerly Section 43) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 Prehearing Session x \$300.00 =	\$ 300.00
2 Hearing Sessions x \$600.00 =	\$1,200.00
Total Forum Fees =	\$1,500.00

Forum Fees are assessed to Claimant in the amount of \$500.00 and to Respondent Smith Barney Shearson, Inc. in the amount of \$1,000.00. Claimant is to receive credit for the \$600.00 hearing session deposit previously filed with the NASD Regulation, leaving no further assessment due from Claimant. Respondent SBS is liable to and shall reimburse Claimant for \$100.00 of the excess hearing session deposit, leaving Respondent SBS with a net assessment of \$900.00 due to the NASD Regulation.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

10/10/96

Bruce Sanders

Bruce Sanders, Presiding
Public Arbitrator

William E. Brazis, Jr.
Public Arbitrator

Arthur J. Salzberg
Industry Arbitrator

Date Decision Served by NASD Regulation:

October 17, 1996

DATE

CONCURRING ARBITRATORS' SIGNATURES

12 October 1996

Bruce Sanders, Presiding
Public Arbitrator

William E. Brazis, Jr.
William E. Brazis, Jr.
Public Arbitrator

Arthur J. Salzberg
Industry Arbitrator

Date Decision Served by NASD Regulation: October 17, 1996

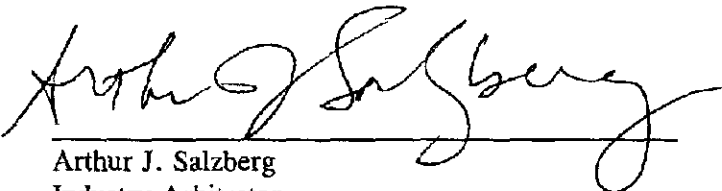
DATE

CONCURRING ARBITRATORS' SIGNATURES

Bruce Sanders, Presiding
Public Arbitrator

William E. Brazis, Jr.
Public Arbitrator

October 11, 1996



Arthur J. Salzberg
Industry Arbitrator

Date Decision Served by NASD Regulation:

October 17, 1996