

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

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In the Matter of the Arbitration Between

Name of Claimant

Charles B. Alexander

96-00739

Name of Respondents

Smith Barney, Inc.  
Peter B. Coley

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**REPRESENTATION**

Claimant Charles B. Alexander ("Claimant") was represented by Brian C. Parker, Esq. of the law firm of Gebhardt & Smith, Baltimore, MD

Respondents Smith Barney, Inc. ("Smith Barney") and Peter B. Coley ("Coley") were represented by Marion S. Chan, Vice President and Associate General Counsel of Smith Barney.

**CASE INFORMATION**

Statement of Claim filed: February 19, 1996.

Claimant's Submission Agreement signed on: February 16, 1996.

Joint Statement of Answer filed by Respondents Smith Barney and Coley (collectively referred to as "Respondent") on: April 18, 1996.

Coley's Submission Agreement signed on: March 25, 1996.

Smith Barney's Submission Agreement was executed by Marion S. Chan, Vice President/Associate General Counsel on: April 18, 1996.

**HEARING INFORMATION**

Hearing Date/Sessions: December 3, 1996 - two sessions

Hearing Location: Tremont Suite Hotels, Baltimore, MD

**CASE SUMMARY**

Claimant alleged that in February of 1993, Coley, recommended that the Claimant open an account at Shearson Lehman Brothers, Inc. ("Shearson") and transfer a number of securities to Shearson that had previously been held in an account at Chapin, Davis & Company ("Chapin, Davis"). Claimant further alleged that after the securities were transferred, Coley elected to sell all of the securities that had been transferred and used the proceeds to pay off a margin balance in the Claimant's account and to purchase

shares in two mutual funds.

Claimant alleged that Coley failed to confer with Claimant prior to selling the securities that were transferred to Shearson. Claimant alleged that Coley failed to consider the tax consequences of selling the securities. Specifically, Coley failed to obtain information about the cost basis for the securities and failed to obtain information about the income taxes that the Claimant would be required to pay if the securities were sold. As a result of the sale of the securities, the Claimant alleged that he was forced to pay in excess of \$58,000.00 of state and federal income taxes and was forced also to pay interest and penalties.

Respondents denied all allegations of wrongdoing alleged by Claimant and assert that Claimant is entitled to no relief. Respondents maintained that any and all losses allegedly suffered by Claimant were the result of Claimant's own actions and decisions. Respondents maintained that in late 1992, Claimant discussed with Coley his (Claimant's) dissatisfaction with the performance and service provided to him in connection with another account held at Chapin, Davis. Respondent maintained that at a subsequent meeting, February 4, 1993, Claimant and Coley discussed several investment alternatives for the assets held in the Chapin, Davis account, including the use of a money manager and the purchase of certain mutual funds. At the conclusion of their meeting, Claimant decided to open a second Smith Barney account and transferred the assets from his Chapin, Davis account to Smith Barney.

Respondents maintained that after Claimant transferred the Chapin, Davis account to Smith Barney, Coley contacted Claimant to discuss the fact that the account had a margin balance of over \$117,000. Respondents maintained that at the recommendation of Coley, Claimant authorized the sale of the transferred securities to pay down a substantial portion of the margin balance and the purchase of two mutual funds: the Hartwell Emerging Growth Fund and the Keystone K-1 Fund. Respondents maintained that each sale and subsequent purchase was done with Claimant's authorization.

#### **RELIEF REQUESTED**

Claimant requested that he be awarded an amount equal to the taxes, interest and penalties that he was forced to pay as a result of the sale of the securities, as well as costs and attorneys' fees.

Respondents have requested that Claimant's claim be dismissed and that Respondents be awarded costs and attorneys' fees.

#### **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.

#### **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 Claimant's claim is denied in its entirety.
2. That the parties shall bear their respective costs including attorneys' fees except as forum fees are specifically addressed below.
3. That any and all relief not specifically addressed herein is denied in its entirety.

**FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fee is assessed.

2 sessions x \$400 = \$800 minus hearing session deposit of 400 = net \$400 due.

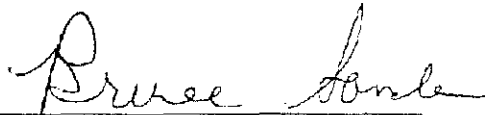
Forum Fees Assessed Against: Claimant. Claimant is assessed the outstanding forum fee in the amount of \$400.

The Forum Fee is payable to the National Association of Securities Dealers, Inc.

Date Award Signed

Concurring Arbitrators' Signatures

12/23/96



Bruce Sanders, Esq., Chairperson  
Public Arbitrator

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Steven G. Shapiro, Esq., Panelist  
Public Arbitrator

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George H. Warner, Panelist  
Industry Arbitrator

Date Award served by NASD Regulation:

December 26, 1996

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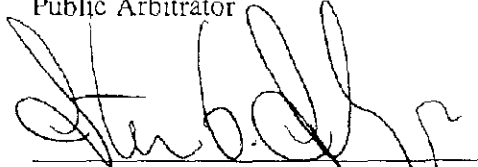
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Concurring Arbitrators' Signatures

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Dec 19, 1996

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Public Arbitrator

  
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Steven G. Shapiro, Esq., Panelist  
Public Arbitrator

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Public Arbitrator

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Steven G. Shapiro, Esq., Panelist  
Public Arbitrator

12/20/96

  
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George H. Warner, Panelist  
Industry Arbitrator

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