

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Stuart N. Costello

96-02082

Name of Respondent

Smith Barney, Inc.
(formerly Smith Barney Shearson, Inc.)

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers Regulation, Inc. on May 14, 1996, claimant Stuart N. Costello ("claimant"), who appeared Pro Se, alleged that in September 1991, he was advised by David Sonne ("Sonne"), a broker of respondent Smith Barney, Inc. (formerly Smith Barney Shearson, Inc.), to invest in Blackstone Advantage Term Trust and Blackstone Strategic Term Trust, as an alternative to his long held Certificate of Deposit. Claimant further alleged that Sonne represented both trusts as Standard and Poors AAA rated and "just as safe as the Certificate of Deposit". Claimant averred that through Smith Barney, Inc. ("respondent"), he purchased 2,150 shares of Blackstone Advantage Term Trust at \$10 7/8 per share, for a total of \$23,381.00., and 2,200 shares of Blackstone Strategic Term Trust at \$10 5/8 per share, for a total of \$23,375.00.

Claimant also alleged that in all conversations with Sonne and on his customer account information which he submitted to respondent, his investment objective was represented as conservative. Claimant also alleged that due to Sonne's omissions, he suffered a loss of principle immediately upon purchase. Claimant asserted that he had also been assured of a 9% return on his investments. Claimant further asserted that Sonne failed to inform him that (a) he was paying a premium price for the shares; (b) that the objective of the fund managers is to return \$10.00 a share upon termination; (c) that these particular funds were subject to the sensitivity and volatility of interest rates; and (d) did not review the risks involved. Claimant also asserted that since October 7, 1994, the funds have further reduced their dividends. Claimant contended that respondent refused to provide a copy of his customer information form which outlined his conservative investment objective. Claimant further contended that, considering his proximity to retirement, Sonne's advice on the investments was inappropriate and highly speculative, and resulted in his loss. Claimant averred that if his funds had remained in Certificate of Deposits, it would be safe and would have yielded over \$37,000.00.

Respondent Smith Barney, Inc., through its representative and in-house counsel, Christopher B. O'Mally, Esq., maintained that (a) the investments were suitable for claimant; (b) that claimant was fully informed as to the particulars of the trusts, by Sonne, prospectus, semi-annual reports, monthly statements, publications and by information available through a toll free number. Respondent further maintained that claimant removed the trusts from respondent in 1993, by which time, \$5,312.00 income had been generated. Respondent contended that claimant is not entitled to recover the speculative losses or losses which occurred three years after he withdrew the securities from respondent. Respondent further contended that claimant received over \$18,000.00 as income on his entire investments with respondent and should not be allowed to "cherry pick his portfolio".

RELIEF REQUESTED

Claimant Stuart N. Costello requested \$5,406.00 in actual damages.

Respondent Smith Barney, Inc., requested that the claim be dismissed in it's entirety.

AWARD

Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert A. Williams, Jr., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimant Stuart N. Costello on May 10, 1996 and by respondent Smith Barney, Inc., on July 24, 1996.

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 claimant Stuart N. Costello against respondent Smith Barney, Inc. are dismissed in their entirety.
2. All other relief requests are denied.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by the claimant Stuart N. Costello shall be retained by NASD Regulation, Inc.

AFFIRMATION

I, **ROBERT A. WILLIAMS, JR.**, 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.

Robert A. Williams, Jr.

Signature of Arbitrator

DATE OF DECISION: January 29, 1997