

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Marshall Lester

96-02627

Name of Respondent

Smith Barney Shearson, Inc.

CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on June 18, 1996, claimant Marshall Lester ("claimant"), who appeared Pro Se, alleged that respondent Smith Barney Shearson, Inc. ("Smith Barney") failed to disclose a release that it had issued a day after he had purchased the stock. Claimant further alleged that on December 6, 1995, he bought 300 shares of PSINET, Inc. at \$26.125 per share. Claimant also alleged that he knew nothing about PSINET and purchased the shares at the specific recommendation of his account representative at Smith Barney, Ms. Renee Siegel ("Siegel"). Claimant asserted that on December 7, 1995, a release crossed the Dow Jones newswire reporting that Smith Barney was initiating coverage of PSINET as an "underperform rating." Claimant further asserted that Siegel never disclosed to him either the release or Smith Barney's view of the stock. Claimant also asserted that in early February when reviewing his portfolio, Siegel told him to continue to hold PSINET even though it had fallen to \$12.00 per share. Claimant contended that it was after this conversation that he looked closer at his monthly reports and noticed PSINET carried a "4/s" rating. Claimant further contended that when he spoke to Siegel about the release, she claimed that she did not believe it was necessary to mention the release, because she did not agree with Smith Barney's position on the stock.

Respondent through its representative and in-house counsel, Ann Parry, maintained that claimant was a sophisticated investor who was at all times aware of the status of his investment. Respondent further maintained that claimant had frequent discussions with Siegel concerning his account, as well as receiving and reviewing his monthly accounts statements which fully disclosed the respective market value and research rating of the investments in his account. Respondent also maintained that even after claimant had received the release report and Smith Barney's rating of PSINET, he decided not to sell any of his shares. Respondent contended that claimant did not rely exclusively on Siegel's investment advice. Respondent further contended

that claimant had in the past declined investment advice offered by Siegal in order to follow his own beliefs and opinions concerning his investments. Respondent also contended that in May 1996, PSINET returned to approximately \$19.00 per share. Respondent maintained that it is not a guarantor of investments and cannot be held liable for losses caused by legitimate market conditions beyond its control.

RELIEF REQUESTED

Claimant Marshall Lester requested \$4,837.50 representing the difference between the purchase price of \$26.125 and the sale price of \$10.00 per share, plus the termination fee of \$100.00 which Smith Barney charged him for moving his account.

Respondent Smith Barney Shearson, Inc. requested that the claims of claimant be dismissed in their entirety plus reasonable costs incurred in defending this claim.

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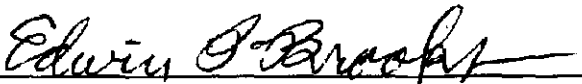
Pursuant to Section 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Edwin Brooks, was selected to review that matter in controversy between the parties set forth in submissions to Arbitration signed by the claimant Marshall Lester on June 17, 1996, and by respondent Smith Barney Shearson, Inc. on July 29, 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 Marshall Lester against Smith Barney Shearson, Inc. are dismissed in their entirety.
2. All other relief requests are denied.
3. The \$125.00 filing fee previously deposited with National Association of Securities Dealers Regulation, Inc. by claimant shall be retained by the NASD Regulation, Inc.
4. All other relief requests are denied.

AFFIRMATION

I, **Edwin P. Brooks**, do hereby swear and affirm that I am the individual described herein, and who executed this instrument, which is my oath and award.


Edwin P. Brooks

Date of Decision: December 6, 1996