

**AWARD**

**NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION**

In the matter of the Arbitration Between

Name of Claimants

Bernard and Lenore Rapkin, and Bernard Rapkin as Co-Trustee of the account of Bernard and Lillian Rapkin

v.

Arbitration No.  
96-03232

Name of Respondents

Smith Barney, Inc., Oppenheimer & Co., Inc., Lee A. West

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**REPRESENTATION**

For Claimants:

Leonard Steiner, Esq.  
Steiner & Libo  
Beverly Hills, California

For Respondents Smith Barney, Inc. and  
Lee A. West:

Christopher O'Malley, Esq.  
Smith Barney, Inc.  
New York, New York

For Respondents Oppenheimer & Co., Inc. and  
Lee A. West:

Richard Kelly, Esq.  
Oppenheimer & Co., Inc.  
New York, New York

### **CASE INFORMATION**

Statement of Claim filed: July 25, 1996

Claimants' Submission Agreement signed: July 17, 1996

Joint Statement of Answer filed by  
Respondents Smith Barney, Inc. and Lee A. West: November 4, 1996

Joint Statement of Answer filed by Respondents  
Oppenheimer & Co., Inc. and Lee A. West: November 12, 1996

### **HEARING INFORMATION**

Pre-Hearing Conference Dates/Sessions: January 28, 1997 (1 session)  
February 27, 1997 (1 session)

Hearing Dates/Sessions: July 29, 1997 (2 sessions)  
July 30, 1997 (2 sessions)

Hearing Location: Los Angeles, California

### **CASE SUMMARY**

Claimants alleged that Respondent West misrepresented the risks and returns associated with certain Municipal Investment Trusts sold to them, which resulted in a loss to Claimants' principal. In addition, Claimants asserted that Respondents committed breach of fiduciary duty, fraud, negligence and elder abuse in connection with the Municipal Investment Trusts purchased on their behalf.

Respondents denied Claimants' claims in their entirety and asserted that the Municipal Investment Trusts were suitable investments given Claimants' objectives and that all risks and benefits were disclosed to Claimants prior to the purchase of the trusts.

### **RELIEF REQUESTED**

Claimants sought rescission of the Municipal Investment Trusts and/or compensatory damages in the amount of \$95,508.58, anticipated losses of \$107,163.19, lost opportunity, punitive damages, interest, costs, and reasonable attorney's fees.

Respondents sought dismissal of Claimants' claims in their entirety and that all costs and disbursements be assessed against Claimants.

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

The parties have agreed that the Award in this matter may be executed in either 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 original remains 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Smith Barney, Inc. and Lee West are jointly and severally liable to and shall pay Claimants Bernard and Lenore Rapkin the sum of \$20,000.00.
2. Respondents Oppenheimer & Co, Inc. and Lee West are jointly and severally liable to and shall pay Claimants Bernard and Lenore Rapkin the sum of \$20,000.00.
3. Claimant Bernard Rapkin as Co-Trustee of the account of Bernard and Lillian Rapkin's claims are denied in their entirety.
4. Claimants' request for punitive damages is denied in its entirety.
5. The parties shall each bear their respective costs, including attorney's fees.

### **FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

One (1) Full Panel Pre-Hearing Conference @ \$750.00/Session	= \$750.00
One (1) One-Member Pre-Hearing Conference @ \$300.00/Session	= \$300.00
<u>Four (4) Hearing Sessions @ \$750.00/Session</u>	<u>= \$3,000.00</u>
Total Forum Fees Assessed	= 4,050.00

<u>Respondent Smith Barney, Inc.'s One-Half Share</u>	<u>= \$2,025.00</u>
Respondent Smith Barney, Inc.'s Balance Due	= \$2,025.00

<u>Respondent Oppenheimer &amp; Co., Inc.'s One-Half Share</u>	<u>= \$2,025.00</u>
Respondent Oppenheimer & Co., Inc.'s Balance Due	= \$2,025.00

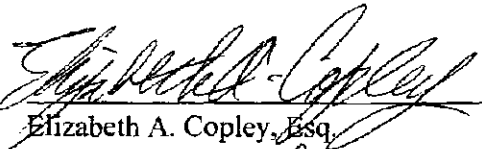
Claimants' Hearing Session Deposit in the amount of \$750.00 shall be refunded by NASD Regulation, Inc.

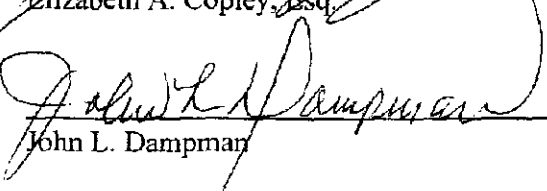
Fees are payable to NASD Regulation, Inc.

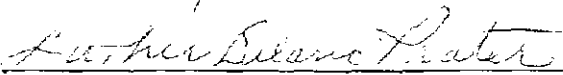
**ARBITRATORS**

<b><u>Name</u></b> .....	<b><u>Public/Industry</u></b>
Elizabeth A. Copley, Esq.	Public Arbitrator
John L. Dampman	Public Arbitrator
Luther Delano Prater	Industry Arbitrator

**Concurring Arbitrators' Signatures**

  
Elizabeth A. Copley, Esq.

  
John L. Dampman

  
Luther Delano Prater

Date of Service: July 31, 1997