

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Name of Claimant

William Book

and

96-03328

Name of Respondent

Smith Barney, Inc.

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### **REPRESENTATION OF PARTIES**

William Book ("Claimant") was represented by Mark A. Levine, Esq., Minneapolis, Minnesota.

Smith Barney, Inc. ("Respondent Smith Barney") and an individual Respondent were represented by Christopher B. O'Malley, Esq., Smith Barney, Inc., New York, New York.

### **CASE INFORMATION**

The Statement of Claim was filed on or about August 5, 1996. Submission Agreement of Claimant William Book was signed on July 26, 1996.

Statement of Answer was filed by Respondent Smith Barney, Inc. on or about October 3, 1996. Submission Agreement of Respondent Smith Barney, Inc. was signed on October 3, 1996 by Christopher B. O'Malley.

### **HEARING INFORMATION**

The hearing was held on Tuesday, June 24, 1997 in Minneapolis, Minnesota for a total of two (2) sessions.

### **CASE SUMMARY**

Claimant alleged that the broker willfully misrepresented the risk involved in commodity futures options trading. It was further alleged that the investment strategy was unsuitable for the Claimant.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that the recommendation to invest in Colorado Commodities Management Corporation was consistent with the Claimant's statement of his investment objectives and experience. Respondent further stated that the Claimant was fully apprised of the potential risks of his investment, and no fraud was perpetrated upon the Claimant. In addition, Respondent stated that the investment, based upon the Claimant's investment objectives, and previous history of trading commodities, was suitable for the Claimant.

### **RELIEF REQUESTED**

Claimant requested an award of damages in the amount of \$34,500. Claimant also requested any other legal and equitable remedies the panel deems just, including, but not limited to, punitive damages permitted and attorneys' fees.

Respondent requested that the claim be dismissed in its entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

Colorado Commodities Management Corporation was originally named as a Respondent in this matter. Colorado Commodities Management Corporation declined to submit to arbitration and not being a member of the NASD is not required to submit to arbitration.

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 original(s) remain 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. The claims asserted in this matter shall be and hereby are dismissed and denied in their entirety.
2. Each party shall bear its own costs, expenses and fees, including but not limited to attorneys' fees, incurred in this matter.

**FORUM FEES**

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) sessions x \$400 = \$800 in forum fees. Pursuant to Rule 10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$120 and shall **retain** as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant William Book. Claimant William Book shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$400 as the balance due for forum fees.

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **assess** the non-refundable member surcharge in the amount of \$200 against Respondent Smith Barney, Inc. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

/s/ David R. Bergerson, Esq.

David R. Bergerson, Esq.  
Public Arbitrator, Presiding Chair

Dated:

July 2, 1997

/s/ John S. Hoyt, Jr.

John S. Hoyt, Jr., Ph.D  
Public Arbitrator

July 2, 1997

/s/ James Nyquist

James Nyquist  
Industry Arbitrator

July 3, 1997