

## NASD AWARD

## NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration BetweenName of Claimants

Robert and Marsha Rosenberg Sayer

96-03527

Name of RespondentsSmith Barney, Inc. (n/k/a Saloman Smith Barney, Inc.)  
Michael Morris

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REPRESENTATION

Claimants Robert and Marsha Rosenberg Sayer ("Claimants") were represented by Lawrence F. Ruggiero, Attorney at Law, New York, NY.

Respondents Smith Barney, Inc. ("Smith Barney") and Michael Morris ("Morris") were represented by William A. Hohausser, Associate General Counsel of Smith Barney, Inc.

CASE INFORMATION

Statement of Claim filed: August 15, 1996

Claimant's Submission Agreement signed on: September 3, 1996

Joint Statement of Answer filed by Smith Barney and Morris (collectively "Respondents") on:  
November 11, 1996

Smith Barney's Submission Agreement executed by William A. Hohausser, First Vice President  
on: November 8, 1996

Morris' Submission Agreement signed on: November 27, 1996

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### HEARING INFORMATION

Pre-Hearing Conference: August 20, 1997 - one session with the full panel

Hearing Dates/Sessions: April 21, 1998 - two sessions  
April 22, 1998 - two sessions  
April 23, 1998 - three sessions

Hearing Location: NASD Regulation, Office of Dispute Resolution, New York, NY

### CASE SUMMARY

Claimants alleged, among other things, that in December, 1994, Claimants opened their Joint and Retirement accounts with Respondents in part based on Morris' pledges that he appreciated Claimants' needs to preserve a large portion of their invested funds and that he would not trade the approximately three hundred eighty thousand dollars of blue chip securities which the Claimants transferred into their account with Respondents. Claimants alleged that Morris continually churned the Joint and Retirement Accounts. Claimants alleged that their accounts reflect annualized turnover rates of approximately 3.23% and 6.73%, respectively. Claimants alleged that the annualized turnover rate of 3.23% in the Joint Account is exponentially greater when calculated by excluding from the average equity therein, the value of the aforementioned blue chips not traded. Claimants alleged that many of the securities which Morris purchased for these non-discretionary accounts were unsuitable and unauthorized. Claimants alleged that most had no ratings or low ratings. Claimants asserted that Morris continually urged Claimants to invest in a private offering, Bio Safe, in which he has an interest. Claimants alleged that they complained to Morris about his activities in their accounts, his excuses for his actions escalated, as did his reassurances that he would act responsibly. Claimants contended that in an effort to exploit the fact that the Claimants are both psychiatrists, Morris even visited the Claimants' home and explained that his mishandling in their accounts was caused by personal tragedies he was suffering which he then explained to the Claimants.

Respondents categorically denied all allegations of wrongdoing asserted by Claimants and specifically maintained that Claimants initiated contact with Morris. Respondents maintained that Claimants were experienced investors and were not the strictly conservative investors that they represented themselves to be. Respondents maintained that Claimants at one time had a substantial debit balance in their account prior to transferring their accounts to Smith Barney. Respondents maintained that Claimants expressed a desire to liquidate many of their "blue chip" securities, even against the advice of Respondents. Respondents denied that any transaction was undertaken without the Claimants prior approval. Respondents maintained that the vast majority of trades that occurred were on Smith Barney's recommended list and were recommended by Morris after extensive analysis. Respondents maintained that Claimants accounts were profitable and that they were properly managed at all times. Respondents asserted Claimant consistently prodded Morris to trade regularly. Respondents denied that Morris ever exploited Claimants or tried to prevent Claimants from filing a complaint. Respondents maintained that Claimants'

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claim is a wrongful attempt to obtain a better rate of return than they actually received.

### **RELIEF REQUESTED**

Claimants in their pleading requested actual damages against the Respondents of at least \$106,000, plus prejudgment interest, punitive damages, related legal fees of over \$25,000, expert witness and consultant's fees, and all other costs and disbursements.

Respondents requested that the Claimants' claim be dismissed in its entirety, and that Respondents be awarded costs, including attorney's 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 Regulation.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents Smith Barney and Morris are jointly and severally liable to Claimants for compensatory damages of \$8,400.00 and shall pay Claimants the sum of \$8,400.00;
2. That Claimants' request for prejudgment interest is denied;
3. That Claimants' request for punitive damages is denied;
4. That Claimants' requests for related legal fees of over \$25,000 is denied, and that each party is to bear their own legal costs;
5. That Claimants' requests for expert witness and consultant's fees, and all other costs and disbursements are denied;
6. That any and all claims for relief not specifically addressed herein are denied in their entirety.

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### FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the following Forum Fees are assessed.

(1 pre hearing conference with the full panel x \$750.00) + (7 hearing sessions x \$750) = \$6000.00

Forum fees are assessed as follows: Claimants are assessed 1/3 of the total forum fees and Respondents are assessed, jointly and severally, 2/3 of the total forum fees.

Claimants are assessed forum fees in the amount of \$2000.00. Claimants are entitled to offset this amount with their previously filed hearing session deposit of \$750.00. The net assessment due from Claimants is \$1250.00.

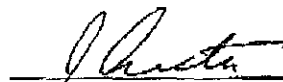
Respondents Smith Barney and Morris are jointly and severally assessed forum fees in the amount of \$4000.00. Smith Barney paid its member surcharge fee of \$350.00. The net assessment due from Respondents is \$4000.00.

Fees are payable to the NASD Regulation, Inc.

Date Signed

Concurring Arbitrators' Signatures

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Joseph J. Arata, Chairman  
Public Arbitrator

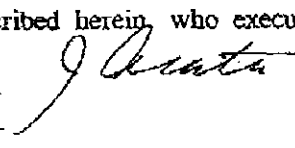
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Robert E. Bartkus, Panelist  
Public Arbitrator

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Jerome H. Levy, Panelist  
Industry Arbitrator

I, JOSEPH J. ARATA, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein who executed this instrument which is my Award.

Date Decision Served by NASD Regulation: 6/9/98 

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Concurring Arbitrators' Signatures

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5-22-98

\_\_\_\_\_  
Joseph J. Arata, Chairman  
Public Arbitrator

W. Bartkus  
\_\_\_\_\_  
Robert E. Bartkus, Panelist  
Public Arbitrator

\_\_\_\_\_  
Jerome H. Levy, Panelist  
Industry Arbitrator

I, \_\_\_\_\_, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, who executed this instrument which is my Award.

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Date Signed

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Joseph J. Arata, Chairman  
Public Arbitrator

\_\_\_\_\_  
Robert E. Bartkus, Panelist  
Public Arbitrator

\_\_\_\_\_  
Jerome H. Levy, Panelist  
Industry Arbitrator

I, Jerome H. Levy, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, who executed this instrument which is my Award.

Date Decision Served by NASD Regulation: 6/9/98