

**AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Don C. Haynes

and

Arbitration No.  
96-03956

Name of Respondent

Smith Barney, Inc.  
Jeffrey Stevenson

**REPRESENTATION OF PARTIES**

Don C. Haynes ("Claimant") was represented by Paul W. Thomas, Esq., Law Offices of Paul W. Thomas, Esq., Carlsbad, California.

Smith Barney, Inc., and Jeffrey Stevenson ("Respondents") were represented by Sean J. Coughlin, Esq., Smith Barney, Inc., New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about September 3, 1996.  
Claimant's Submission Agreement was signed on August 14, 1996.  
Respondents' Joint Statement of Answer was filed on or about November 20, 1996.  
Smith Barney's Submission Agreement was signed on November 1, 1996.  
Stevenson's Submission Agreement was signed on September 19, 1996.

**HEARING INFORMATION**

A pre-hearing conference was held on January 10, 1997.

The hearing was held on October 29, 1997 and October 30, 1997 in San Diego, California for a total of 4 sessions.

**CASE SUMMARY**

Claimant alleges that the Respondents failed to liquidate Claimant's position in Iomega stock pursuant to Claimant's express directions. Claimant alleges that Respondents actions constitute

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violations of various securities laws, intentional and negligent misrepresentation, breach of fiduciary duty, breach of the implied covenant of good faith and fair dealing, violations of NASD and NYSE rules, professional malpractice and breach of contract.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically argue that the Claimant maintained his account with significant margin and failed to repay his margin balances in a timely fashion. Respondents further argue that Claimant never placed a stop order on his Iomega position even though he was fully advised in a timely fashion of the decline of the stock. Respondents made a counter-claim for an outstanding debit balance in Claimant's account.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$244,375 plus 7% pre-award and post-award interest, filing fees in the amount of \$950, costs and expenses totaling \$5000. Claimant also requested an award of unspecified punitive damages.

Respondents requested that the claims asserted against them be denied in their entirety and requested that they be awarded the sum of \$12,104.93, plus costs, on their outstanding debit balance claim.

### **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 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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Claimant is awarded and Smith Barney shall pay to Claimant the sum of \$68,082. This amount is inclusive the sum of \$5,482, which represents an award of interest to date of the decision;
2. Claimant is awarded and Smith Barney shall pay to Claimant the sum of \$3,800 for expert witness fees;
3. Each and every claim as to Jeffrey Stevenson is dismissed;
4. All other claims in the Statement of Claim are dismissed;

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5. Claimant's request for punitive damages is denied;
6. Each and every claim in Respondents' counter-claim is denied.
7. Each side to bear their own costs and attorneys' fees except as expressly mentioned above in item (2.).

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were 5 sessions x \$750 = \$3,750 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) all forum fees are assessed against Smith Barney, Inc..

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 \$200 and shall refund the hearing session deposit of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

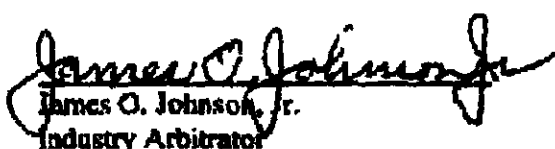
Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$350 paid by Smith Barney, Inc..

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

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William L. Merkin, Esq.  
Public Arbitrator, Presiding Chair

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James H. Mayer, Esq.  
Public Arbitrator

  
James O. Johnson, Jr.  
Industry Arbitrator

Date Served: December 2, 1997

Dec. 1, 1997

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Arbitration No. 96-03956  
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5. Claimant's request for punitive damages is denied;
6. Each and every claim in Respondents' counter-claim is denied.
7. Each side to bear their own costs and attorneys' fees except as expressly mentioned above in item (2.).

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William L. Merkin, Esq.  
Public Arbitrator, Presiding Chair

Dated: \_\_\_\_\_

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James H. Mayer, Esq.  
Public Arbitrator

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James O. Johnson, Jr.  
Industry Arbitrator

Date Served: December 2, 1997

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Arbitration No. 96-09936

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5. Claimant's request for punitive damages is denied;
6. Each and every claim in Respondents' counter-claim is denied.
7. Each side to bear their own costs and attorneys' fees except as expressly mentioned above in item (2.).

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Public Arbitrator, Presiding Chair

  
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James H. Mayer, Esq.  
Public Arbitrator

\_\_\_\_\_  
James O. Johnson, Jr.  
Industry Arbitrator

Date Served: December 2, 1997

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November 25, 1997