

## **AWARD**

**NASD, Regulation, Inc.,  
Office of Dispute Resolution**

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In the matter of the Arbitration Between

NASD Regulation, Inc.  
No. 96-04090

Claimant

Stephen Gehrs, MD.

vs.

Respondent

Smith Barney, Inc.

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### **REPRESENTATION OF PARTIES**

Stephen Gehrs, M.D., ("Claimant") was represented by Robert A. Uhl, Esq., Aidikoff & Uhl, Beverly Hills, California

Smith Barney, Inc., ("Respondent") was represented by Christopher B. O'Malley, Esq., Smith Barney, Inc., New York, New York.

### **CASE INFORMATION**

Claimant's Statement of Claim was filed on or about September 10, 1996. Claimants' Submission Agreement was signed on September 10, 1996.

Respondent's Statement of Answer was filed on or about November 7, 1996. Respondent's Submission Agreement was signed on November 11, 1996.

### **HEARING INFORMATION**

A pre-hearing conference was held on March 18, 1997.

The hearing was held on September 15, 1997 in Las Vegas, Nevada. The hearing lasted one session.

### **CASE SUMMARY**

Claimant alleges that the Respondent made an unauthorized sale of 7000 shares of Incomnet, Inc. Additionally Claimant alleges that after notifying Respondent of the unauthorized sale, the

subsequent non-response of the Respondent, the Respondent then made another unauthorized transaction by repurchasing the 7000 shares of Incomnet, Inc. At the time of the alleged unauthorized purchase the Incomnet shares had risen in price by approximately three dollars. Claimant alleges that Respondents actions constitute a breach of fiduciary duty, a failure to supervise, and valuations of Federal Securities Laws and the NASD rules of Fair Practice.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically argued that the sale of the shares was made subsequent to repeated notices regarding an outstanding margin call and several discussions with the Claimant. Further Respondent argued that following the sale of the shares Claimant, after arranging for stocks to be transferred to raise his equity, contacted Respondent in order to arrange for the repurchase the 7000 shares of Incomnet based on Claimants optimism regarding outlook for the company.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$35,494 plus interest from 1995 to be award date and unspecified punitive damages. Additionally, Claimant requested an award of costs and punitive damages.

Respondent requested that the claims asserted against it be denied in their entirety.

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

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the Award while the originals 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. Each and every claim of the Claimant is dismissed.
2. Claimant's request for punitive damages is denied.
3. Each side to bear their own costs and expenses.

### FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if attended by only a single member of the panel. There was 1 session x \$400 plus 1 pre-hearing conf. x \$400 = \$800 in forum fees. Pursuant to Rule 10332(b) of the NASD Regulation, Inc., Office of Dispute Resolution Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the parties shall divide the forum fees 50%-50%, with the Claimant bearing 50%, and the Respondent jointly and severally bearing 50%.

**Total Fees**

1 Hearing Session @ \$400.00 =	\$400.00
1 Pre-Hearing Conf. @ \$400.00 =	\$400.00
<b>Total</b>	<b><u>\$800.00</u></b>

Claimant's 1/2 share	\$400.00
Claimant's credit for deposit	<u>\$580.00</u>
Claimant's balance <refund>	\$180.00

Respondent's 1/2 share	<u>\$400.00</u>
Respondent's Balance	\$400.00


Pursuant to Rule 10332(c) of the Code, NASD Regulation, Inc., 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., by the Claimant. Additionally, Claimant made an overpayment to the NASD of \$180.00 which is to be refunded.

Pursuant to Rule 10333 of the Code, the NASD Shall retain the member surcharge fee in the amount of \$200 previously paid or owing by Smith Barney, Inc.

**Fees are payable to the NASD, Regulation, Inc.**

Concurring Arbitrator Signature:


Date signed:

  
Douglas Edwards, Esq.  
Public Arbitrator, Presiding Chair

10/7/97

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**Steven K. Lum**  
**Public Arbitrator**

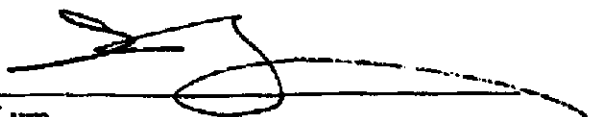
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**Alan S. Mann**  
**Industry Arbitrator**

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10-6-97

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**Steven K. Lum**  
**Public Arbitrator**

10/13/97

**Alan S. Mann**  
**Industry Arbitrator**