

**AWARD**

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

In the matter of the Arbitration Between

**Name of Claimant(s)**

Jeffrey C. Jewell

Arbitration  
No. 96-04239

**Name of Respondent(s)**

Smith Barney Inc.  
David Alderman

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**REPRESENTATION**

For Claimant: Katherine Hendricks, Esq., Hendricks & Lewis,  
Seattle, Washington

For Respondents: Marion S.Chan, Esq., Smith Barney Inc., New York,  
New York

**CASE INFORMATION**

Statement of Claim filed: September 18, 1996

Claimant's Submission Agreement signed: October 3, 1996

Joint Statement of Answer filed by Respondents: December 20, 1996

Respondents' Submission Agreements signed as follows:

Smith Barney Inc.: December 20, 1996

David Alderman: November 25, 1996

**HEARING INFORMATION**

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s):   October 28, 1997 (two sessions)  
  October 29, 1997 (one session)

Hearing Location:                   Seattle, Washington

### CASE SUMMARY

Claimant alleged that his stated investment objectives were growth, tax deferral, liquidity and current income in that order and alleged that the stated risk tolerance for his account was indicated to be moderate. Claimant further alleged that when he deposited an additional \$9,600.00 in his account, he advised Respondent David Alderman that he needed an investment that was safe from a risk standpoint. Claimant further alleged that his investment in EXX Inc. (EXX), a highly speculative volatile stock, was contrary to Claimant's stated investment objectives. Claimant further alleged that he was never advised and he was unaware of the highly speculative nature of the EXX stock.

Respondents alleged that at all times Mr. Alderman kept Claimant fully apprised of the performance and developments concerning Claimant's investment in EXX; Claimant's investment in EXX was also consistent with his investment experience; and that Mr. Alderman's recommendation of EXX was also consistent with other recommendations made by him and accepted by Claimant. Respondents asserted that it is unfortunate that Claimant's investments in EXX were not ultimately profitable and alleged that Respondents cannot be held responsible for Claimant's decision to play the market. Respondents further alleged that they acted properly in handling Claimant's account and alleged that they made no guarantees and made and disclosed all applicable risks. Respondents further alleged that through his investment experience, Claimant was well aware of the vagaries of the market place; that Respondents are not the guarantors of any particular security or investment strategy; and that the losses in Claimant's account were due solely to legitimate and unforeseeable market fluctuations for which Respondents should not be held liable. Respondents also asserted affirmative defenses.

### RELIEF REQUESTED

Claimant requested \$26,263.00 plus attorney's fees and costs.

Respondents requested dismissal of Claimant's claims, costs and reasonable attorneys' fees.

### 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 originals remain on file with NASD Regulation, Inc. (NASDR).

### 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 are jointly and severally liable for and shall pay to Claimant the sum of \$14,000.00.
2. The parties shall each bear their respective costs including attorney's fees.

### FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: NASDR shall retain the \$400.00 hearing session deposit previously deposited by the Claimant. Forum fees shall be split between the parties and are calculated as follows:


Three hearing sessions @ \$400.00/session	=	\$1,200.00
Total fees assessed	=	\$1,200.00
Claimant's share (50%)	=	\$ 600.00
Credit for hearing deposit	=	\$ 400.00
Balance due	=	\$ 200.00
Respondents' share, jointly and severally (50%)	=	\$ 600.00
Balance due	=	\$ 600.00

Fees are payable to NASD Regulation, Inc.

### ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
James M. Shaker, Esq.	Public Arbitrator
Ronald S. Matthew	Public Arbitrator
William W. Anderson	Industry Arbitrator

Concurring Arbitrators' Signatures

  
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James M. Shaker, Esq.

\_\_\_\_\_  
Ronald S. Matthew

\_\_\_\_\_  
William W. Anderson

Date of Decision: 12/11/97

Date Served: 12/12/97

Concurring Arbitrators' Signatures

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James M. Shaker, Esq.

*Ronald S. Matthew*  
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Ronald S. Matthew

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William W. Anderson

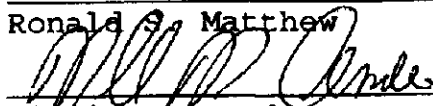
Date of Decision: Oct 29, 1997

Date Served: 12/12/97

Concurring Arbitrators' Signatures

\_\_\_\_\_  
James M. Shaker, Esq.

\_\_\_\_\_  
Ronald S. Matthew

  
\_\_\_\_\_  
William W. Anderson

Date of Decision: 10-29-97

Date Served: 12/12/97