

N.A.S.D. AWARD**NASD Regulation, Inc. Office of Dispute Resolution**

In the Matter of the Arbitration Between

Name of Claimant

James Doubleday, IRA

96-04249

Name of Respondents

Smith Barney, Inc.
Jerry Jiganti

REPRESENTATION

For Claimant: William T. Kirtley, Esq., Sarasota, FL.

For Respondents: Linda R. Alpert, Esq. of Smith Barney, Inc. New York, NY.

CASE INFORMATION

Statement of Claim filed: September 23, 1996.

Claimant's Submission Agreement signed on: October 11, 1996.

Respondent Jerry Jiganti and Smith Barney, Inc.'s Submission Agreements signed on: November 14, 1996.

Joint Statement of Answer filed by Respondent Smith Barney, Inc. and Jerry Jiganti on: November 15, 1996.

HEARING INFORMATION

On February 2, February 3, and February 4, 1998 in Tampa, FL hearings lasting six (6) sessions were conducted.

CASE SUMMARY

The Statement of Claim in this matter, as filed by the Claimant, James Doubleday as the beneficiary of the James Doubleday Individual Retirement Account (the "IRA Account"), alleged that the Respondents, Smith Barney, Inc. and Jerry Jiganti (the "Respondents"), engaged in improper and unlawful conduct in connection with the administration and handling of the IRA Account of the Claimant in that unsuitable securities were purchased for the IRA Account and excessive trading occurred. The Statement of Claim alleged liability theories resting in statutory securities fraud, common law fraud and a breach of fiduciary duty. The Statement of Claim also indicated, among other matters, that the IRA Account had never been

a discretionary account.

Respondents asserted that the IRA Account at issue had not been subject to excessive trading, that the Claimant exercised control and dominion over the Account and made the investment decisions relative to the IRA Account, and that the securities were suitable by reason of investment quality or as a result of the selection of such securities by the Claimant.

Respondents denied all allegations of wrongdoing and liability for Claimant's alleged loss and asserted that all transactions in the account were authorized and suitable in light of Claimant's stated objectives and financial background; that Claimant's complaint is merely a hindsight attack on the performance of some of the stocks purchased; that his request for damages, whether compensatory or otherwise, should be denied, and his claims dismissed.

RELIEF REQUESTED

Claimant requested that the panel impose liability and enter a monetary award providing for compensatory damages, which compensatory damages would be constituted of out-of-pocket damages sustained by Claimant, as well as damages equating to how the IRA Account would have performed had it been properly managed during the course of time that the IRA Account was maintained with the Respondents, such properly managed account damages being based in part upon the damage methodologies set forth in Miley v. Oppenheimer & Co., Inc., et al., 637 F.2d 318 (5th Cir. 1981). Claimant specifically requested:

- A. Compensatory and rescissory damages in the amount of at least \$50,000.00;
- B. The difference between the principal value of the account as traded and administered by the Respondents and the principal value the account would have attained had it been properly managed with suitable investments and appropriate frequency of investment transactions;
- C. The difference between the value of the income generated from the account investments as traded and administered by the Respondents and the value of the income generated from the account investments which it would have attained had it been properly managed with suitable investments and appropriate frequency of investment transactions;
- D. The disgorgement of all commissions and/or other compensation paid to the Respondents for management of the account;
- E. Interest at the legal rate provided by Florida law with respect to such award of compensatory and rescissory damages calculated from the time of the investment in the securities described herein;
- F. Attorneys' fees as provided by the Florida Securities and Investor Protection Act;
- G. Punitive damages which are appropriate to the circumstances as determined by the arbitration panel; and,
- H. Claimant's costs associated with the prosecution of this claim.

Respondents requested that all claims be dismissed with costs assessed against Claimant.

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 NASD Regulation, Inc.

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 found not liable in that Claimant failed to prove sufficient liability to justify an award against Respondents.
2. Respondents Smith Barney, Inc. and Jerry Jiganti shall pay to Claimant \$800.00 representing reimbursement of the hearing session deposit and postponement fee previously paid by Claimant.
3. Claimant's requests for compensatory damages, interest, punitive damages and RICO damages are denied.
4. The parties' requests for costs and attorney's fees are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the panel has assessed forum fees against Respondents Smith Barney, Inc. and Jerry Jiganti, jointly and severally, in the amount of \$2,400.00 (\$400.00 x 6 sessions) for which NASD Regulation, Inc. shall retain the \$400.00 previously deposited by the Claimant in partial satisfaction thereof leaving a balance due in the sum of \$2,000.00.

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

Concurring Arbitrators' Signatures

Name	Public/Industry
/S/ _____ Sam A. Giunta	Public
/S/ _____ Jerry M. Hamovit, Esq.	Public
/S/ _____ Willson O. Edwards	Industry

Date of Decision: 5/28/98