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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Jay Liebman  
Bella Liebman (deceased)

96-04272

Name of Respondents

Smith Barney, Inc.  
Rodger Farquhar  
Randall Hutchisson, Jr.  
Frank Pagnotta  
James Dimon  
Judy Maxineau

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**REPRESENTATION**

For Claimants: Jay Liebman appeared for the Claimants.

For Respondents: Ann Parry, Esq. of Smith Barney, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed: September 26, 1996.

Claimant's Submission Agreement signed on: September 10, 1996.

Joint Statement of Answer filed by Respondents on: November 25, 1996.

Respondent Smith Barney Inc.'s Submission Agreement signed on: November 22, 1996.

Respondent Rodger Farquhar's Submission Agreement signed on: November 11, 1996.

Respondent Randall Hutchisson, Jr.'s Submission Agreement signed on: November 06, 1996.

Respondents Frank Pagnotta, James Dimon, and Judy Maxineau did not execute Submission Agreements.

### HEARING INFORMATION

On March 11, 1997 a pre-hearing conference lasting one (1) session was conducted with the arbitration panel.

On June 17, 1997 a pre-hearing conference lasting one (1) session was conducted with the chairperson.

On June 18, 1997 hearings lasting two (2) sessions were conducted in Tampa, FL.

### CASE SUMMARY

Claimant Jay Liebman alleged that the Respondents committed the following violations: account negligence and disregard of client privileges; disregard for known mutual fund breakpoints; overcharging on purchases; failure to provide accurate information; failure to provide prospectuses; recommendation of unsuitable investments; failure to correct errors; failure to supervise employees; false advertising; and failure to re-credit interest; failure to reply to customer concerns.

Respondents maintained that the unit investment trusts purchased in Claimants' account were suitable for Claimants' investment objectives. The Respondents further contended the following: that the unit investment trusts have produced gains in the amount of approximately \$61,000.00 to date, not losses as Claimants alleged; most of the operational matters about which Claimants complain involve items that were previously resolved; Respondents attempted to ascertain the correct breakpoints for Claimants' purchases of Franklin Funds but that task was made difficult by the fact that Claimants did not hold their Franklin shares at Smith Barney; and Respondents properly serviced Claimants' account and corrected any operational errors that were brought to their attention.

### RELIEF REQUESTED

Claimants requested \$40,000.00 for Unit Investment Trust losses; correction of all mutual fund share purchase overcharges including addition of shares and delinquent dividend payments; redemption of Bella Liebman's Franklin Fund IRA; \$100.00 for account termination and transfer fees; \$4.00 for the service fee charged on February 15, 1996; \$35.35 for an overcharge on commission charged on February 15, 1996; \$50.00 for ten (10) unnecessary death certificate copies; \$5,000.00 for arbitration expenses; and, \$50,000.00 in punitive damages. In addition, Claimants requested that sanctions be assessed against the Respondents.

Respondents requested that the Statement of Claim be dismissed.

### 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.

Subsequent to the filing of this action, Bella Liebman passed away.

Prior to commencement of the evidentiary hearing in this matter, the Panel considered a Motion To Dismiss Respondents Frank Pagnotta, James Dimon and Judy Maxineau and the Claimants' response thereto. After carefully considering the Motion, the Panel dismissed Respondents Frank Pagnotta, James Dimon and Judy Maxineau.

### 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. All claims against Respondents Rodger Farquhar and Randall Hutchisson, Jr. are dismissed.
2. All references to this arbitration proceeding shall be expunged from the CRD records of Respondent James Dimon.
3. There shall be a redemption to Jay Liebman of Bella Liebman's Franklin Fund IRA account presently held at Smith Barney, Inc.
4. Respondent Smith Barney, Inc. shall pay to Claimant Jay Liebman the sum of \$557.97 as a correction for five (5) uncorrected mutual fund breakpoint transactions and not as a finding of wrongdoing.
5. The Claimants' requests for punitive damages, compensatory damages, interest and sanctions are denied.
6. Each party shall bear their respective costs including attorneys' fees.

### FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$1,800.00 (one pre-hearing conference with the entire panel x \$500.00 plus one pre-hearing conference with the Chairperson x \$300.00 plus two hearing sessions x \$500.00).

1. Respondent Smith Barney, Inc. is hereby assessed \$1,800.00 for which the National Association of Securities Dealers Regulation, Inc. shall retain the \$500.00 previously deposited by the Claimants in partial satisfaction thereof, leaving a balance due in the sum of \$1,300.00.
2. The National Association of Securities Dealers Regulation, Inc. shall retain the \$300.00 member surcharge previously paid by the Respondent Smith Barney, Inc.

Fees are payable to the National Association of Securities Dealers Regulation, Inc.

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Concurring Arbitrators' Signatures

Public/Industry

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Floyd A. Hillstrom, Esq.  
Chairperson

Public

/S/

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Don Porter

Public

/S/

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Darryll R. Bauchert, Sr.

Industry

Date of Decision: 8/13/97 \_\_\_\_\_