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## **AWARD**

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

In the Matter of Arbitration Between

John Veres and Vera Veres,  
Claimants,

and

No. 96-04385

Smith Barney Incorporated and Alton T. Davis,  
Respondents.

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### **REPRESENTATION OF PARTIES**

For Claimants: John Veres and Vera Veres ("Claimants" or the "Veres") were represented by Alan F. Block, Esq. of Block & Landsman, located in Chicago, Illinois.

For Respondents: Smith Barney Incorporated ("Smith Barney") and Alton T. Davis ("Davis") (hereinafter collectively referred to as "Respondents") were represented by Etta M. Gumbs, Esq. of Smith Barney, located in New York, New York.

### **CASE INFORMATION**

Veres' Statement of Claim was filed on: September 24, 1996.

Veres' Submission Agreement was signed on: August 27, 1996.

Smith Barney and Alton's Statement of Answer was filed on: November 25, 1996.

Smith Barney's Submission Agreement was signed on: January 10, 1997 by Etta M. Gumbs, Vice-President, Smith Barney Incorporated.

Alton's Submission Agreement was signed on: January 10, 1997.

### **HEARING INFORMATION**

Pre-hearing conferences were held on: May 30, 1997 for one (1) session.

The hearing was held on: June 10, 1997 for three (3) sessions.

The hearing was held in: Chicago, Illinois.

### **CASE SUMMARY**

Claimants alleged that Davis, a registered representative of Smith Barney as of March 1993, recommended the wholesale turnover of the securities held in Claimants' accounts and recommended the purchase of bonds that were unsuitable for the Claimants' investment objectives and risk tolerance. Claimants asserted that Davis engaged in a pattern of purchasing blocks of stocks, only

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to quickly turnover these issues. According to Claimants, between March 1993 and January 1994, the effective annual turnover rate for the Veres' account exceeded 100%, which generated in excess of \$8,000 in commissions and fees. Claimants reported approximately \$3,200 in losses from Davis' buying and selling of equities. Claimants added that, by the end of 1992, Davis began moving in and out of bonds in much the same manner as the equities, and instead of diversifying the bond investments over five or six vehicles as had been done previously, Davis concentrated the Veres' in increasingly fewer issues, ultimately gambling in excess of 60% of the total value of their account in a single bond. According to Claimants, between February 1992 and April 1994, Davis entered, and after March 1993 Smith Barney was the principal for, the following bond trades in the Veres' account:

<u>DATE</u>	<u>TRANSACTION</u>	<u>COST</u>	<u>PROCEEDS</u>	<u>PROFIT (LOSS)</u>
2/24/92	buy: \$110,000 Cook County AMBAC; 6.230%; 11-1-21	\$110,123.31		
12/28/92	sell: \$110,000 Cook County AMBAC; 6.230%; 11-1-21		\$108,883.69	(\$1,239.62)
12/30/92	buy: \$110,000 Ill. Dev. Fin. Auth.; 6.00%; 2-1-08	111,260.60		
8/12/93	sell: \$110,000 Ill. Dev. Fin. Auth.; 6.00%; 2-1-08		111,811.52	550.92
8/17/93	sell: \$50,000 Chicago, Ill. RFDG. Ser B; 7.00%; 1-1-13	50,750.96	52,462.37	1,711.37
8/18/93	buy: \$160,000 Cook County GEN. OBLG. B; 5.375%; 11-15-18	161,126.63		
3/3/94	sell: \$160,000 Cook County GEN. OBLG. B; 5.375%; 11-15-18		153,103.20	(8,023.43)
3/3/94	buy: \$140,000 Rosemont Village GEN. OBLG.; 5.3%; 12-01-04	147,707.62		
4/11/94	sell: \$140,000 Rosemont Village GEN. OBLG.; 5.3%; 12-01-04		132,747.92	(14,959.70)
<b>TOTALS</b>		<b>\$580,969.12</b>	<b>\$559,008.70</b>	<b>(21,960.46)</b>

Claimants asserted the following causes of action: (1) negligence; (2) fraud and churning; (3) violation of the Illinois Consumer Fraud and Deceptive Business Practices Act; and (4) breach of fiduciary duty.

Respondents denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on their part. Respondents stated that all of the transactions undertaken in the Veres' accounts were authorized by the Veres after full and complete discussions concerning the risks, benefits, costs and fees associated with the investments now complained of. According to Respondents, at no time did Davis exercise any degree of control or discretion over Claimants' investments. Respondents further stated that at all times Davis and Smith Barney adhered to all applicable standards and laws. Respondents also asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested an award against Davis individually for conduct occurring prior to March 1993 and against Smith Barney and Davis, jointly and severally, for conduct after Davis joined Smith Barney in March 1993 for: compensatory damages of \$23,921 against Davis and Smith Barney jointly and severally, and against Davis individually for \$1,239; pre-judgment and post-judgment interest at 9% from March 1993; punitive damages under Claimants' second and third causes of action; disgorgement of the commissions Davis earned from the improper stock and bond transactions from February 1992 through April 1994, and disgorgement of the commissions and fees Smith Barney earned from the improper stock and bond transactions from March 1993 through April 1994 under Claimants' second cause of action; and reasonable attorneys' fees and costs of this arbitration as allowed under Claimants' third cause of action. At hearing, the damages requested was amended to an amount in excess of approximately \$50,000.00.

Respondents requested that the claims asserted against them be denied in their entirety and that the panel sign an order expunging this case from the registration record of Davis.

### **OTHER ISSUES CONSIDERED AND 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 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. Respondents Smith Barney Incorporated and Alton T. Davis are jointly and severally liable for and shall pay Claimants John Veres and Vera Veres compensatory damages in the sum of \$17,885.71;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically awarded is hereby denied.

### FORUM FEES

Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed: one (1) pre-hearing session x \$300 + three (3) hearing sessions x \$400 = \$1,500.

Pursuant to § 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of \$100 and shall retain as forum fees the hearing session deposit of \$400 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by John Veres and Vera Veres. John Veres and Vera Veres are jointly and severally liable for and shall pay the NASD Regulation, Incorporated Office of Dispute Resolution forum fees of \$350 (= ½\$1,500 total forum fees - \$400 hearing session deposit). Respondents Smith Barney and Davis are jointly and severally liable for and shall pay the NASD Regulation, Incorporated Office of Dispute Resolution forum fees of \$750 (= ½\$1,500 total forum fees).

Furthermore, pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge of \$200 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Smith Barney.

#### Concurring Arbitrators' Signatures

/s/ James L. Schwartz, Esq.

James L. Schwartz, Esquire  
Chairperson/Public Arbitrator

August 20, 1997

Dated:

/s/ Epaminondas Eddie Manelis, Esq.

Epaminondas Eddie Manelis, Esquire  
Public Arbitrator

August 19, 1997

Dated:

/s/ Gregg Rzepczynski

Gregg Rzepczynski  
Industry Arbitrator

August 19, 1997

Dated: