

**AWARD**

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

In the matter of the Arbitration Between

**Name of Claimant(s)**

Susie Tsang  
Aaron Tsang

Arbitration  
No. 96-04501

**Name of Respondent(s)**

Smith Barney Shearson Inc.

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**REPRESENTATION**

For Claimants: Susie Tsang and Aaron Tsang, Duarte, California

For Respondent: Dena L. Murphy, Esq., Keesal, Young & Logan, Long Beach, California

**CASE INFORMATION**

Statement of Claim filed: September 28, 1996

Claimants' Submission Agreements signed as follows:

Susie Tsang: October 4, 1996 and December 7, 1996

Aaron Tsang: November 14, 1996 and December 7, 1996

Statement of Answer filed by Respondent: January 8, 1997

Respondent's Submission Agreement signed: January 8, 1997

### HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

February 28, 1997 (one session)

May 2, 1997 (one session)

July 18, 1997 (one session)

July 25, 1997 (one session)

Hearing Date(s)/Session(s): September 19, 1997 (two sessions)

Hearing Location: San Diego, California

### CASE SUMMARY

Claimant Susie Tsang contends that Respondent wrongfully canceled two purchases made by Respondent on her behalf and that she suffered economic and non-economic damages as a result. Susie Tsang alleges that Respondent, through its authorized representatives discriminated against her and that the closing of her account was done with malice by Respondent. She claims that fraudulent representations were made to her by Respondent through its agents. She made two purchases: (1) 225 shares of AIM Constellation Mutual Fund at 24.180 on August 14, 1996 with a settlement date of August 19, 1996; and (2) 217 shares of a new issuing of Duke Realty Investment Inc. 9.10% Dep. Sh. Ser. A Cumulative preferred stock at 25.00 on August 13, 1996 with a settlement date of August 16, 1996. The AIM purchase price was \$5,440.50 and the Duke purchase price was \$5,425.00. On August 15, 1996 the trades were canceled by Respondent and on Thursday, August 15, 1996 all monies of Susie Tsang (three checks--\$600.00; \$5,457.12; and \$8,853.93) were returned to Susie Tsang by Respondent via personal delivery. The three checks that had been presented to Respondent by Susie Tsang were returned uncashed. On Friday, August 16, 1996 Respondent forwarded a check for \$6.00 to Susie Tsang representing interest on the funds that were held by Respondent.

Claimant Aaron Tsang contends that Respondent wrongfully canceled a purchase of 25 shares of AIM Constellation Mutual Fund. This purchase was made on August 14, 1996 with a settlement date of August 19, 1996 at the price of 24.180. The trade was canceled by Respondent on August 15, 1996. Aaron Tsang contends that Respondent unfairly terminated his account due to his living in the

same household with Susie Tsang.

Respondent Smith Barney Inc. (also known as Smith Barney Shearson Inc.) contends that it did not discriminate against Claimants, that it acted appropriately in terminating the accounts, and that Claimants suffered no damages as a result of the canceling of trades.

#### **RELIEF REQUESTED**

Claimant Susie Tsang requested damages of \$1,292.50 (comprised of interest, gasoline expenses, Federal Express charges, meal expenses, difference in price between price of AIM fund Claimant believed it was trading at and price it was purchased at, reinstatement penalty for re-investing in the AIM account after 90 days of prior liquidation and interest on the Duke Realty Preferred Shares) plus \$60.00 Arbitration and Notary Fees plus \$2,000.00 for emotional distress and punitive damages.

Claimant Aaron Tsang requested damages comprised of penalties for re-investing in the AIM account after 90 days of prior liquidation, emotional distress and punitive damages.

Respondent requested an award in its favor plus forum fees.

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

On or about May 28, 1997, Presiding Arbitrator, Steven J. Roberts, reviewed and considered the written and oral positions of the parties relative to Respondent's Motion to Dismiss. Mr. Roberts denied the Motion.

Evidentiary issues were addressed and all were denied except the motion of Claimants to not allow telephonic testimony by Respondent's La Jolla California Branch Manager Joseph Ulloa was granted.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The claim of Claimant Susie Tsang is denied. The actions of Respondent were appropriate and there was no showing of discrimination, wrongful conduct, breach of contract, breach of duty, fraud, misrepresentation or damages. The trades were canceled properly and funds returned promptly. Claimant suffered no compensable damages in any event.

2. The claim of Claimant Aaron Tsang is denied. The actions of Respondent were appropriate and there was no showing of discrimination, wrongful conduct, breach of contract, breach of duty, fraud, misrepresentation or damages. The trade was canceled properly and funds returned promptly. Claimant suffered no compensable damages in any event.

3. The claims for punitive damages are denied.

4. 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: NASD Regulation, Inc. shall retain the \$25.00 hearing session deposit previously deposited by the Claimants. Forum fees shall be split between the parties and are calculated as follows:

Four pre-hearing sessions @ \$25.00/session	=	\$100.00
Two hearing sessions @ \$25.00/session	=	\$ 50.00
Total fees assessed	=	\$150.00

Claimants' share (50%)	=	\$75.00
Credit for hearing deposit	=	\$25.00
Balance due	=	\$50.00

Respondent's share (50%)	=	\$75.00
Balance due	=	\$75.00

Fees are payable to NASD Regulation, Inc.

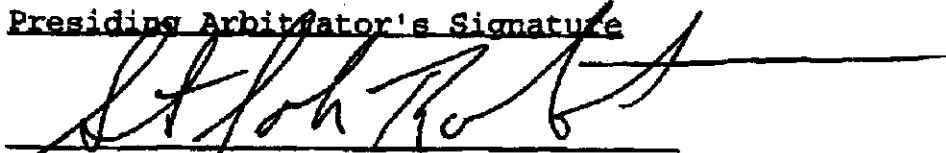
**PRESIDING ARBITRATOR**

**Name** ..... **Public / Industry**

Steven J. Roberts, Esq.

Public Arbitrator

**Presiding Arbitrator's Signature**



Steven J. Roberts, Esq.

**Date of Decision:** 10/23/97