

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Kenneth Adal, Cheyenne Management Inc., and Paradise Service Bureau Inc., (Claimants) vs.  
Smith Barney Inc. and Anthony Vaccaro, (Respondents)

Case Number: 96-05709

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants Kenneth Adal ("Adal"), Cheyenne Management Inc. ("Cheyenne"), and Paradise Service Bureau Inc. ("Paradise"), hereinafter collectively referred to as "Claimants": George M. Gavalas, Esq., a sole practitioner, Mineola, NY.

Respondents Smith Barney Inc. ("SBI") and Anthony Vaccaro ("Vaccaro"), hereinafter collectively referred to as "Respondents": Christopher B. O'Malley, Esq., Salomon Smith Barney Inc., New York, NY. Previously represented by: Marion S. Chan, Esq., Vice President and Associate General Counsel, Smith Barney Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: December 17, 1996.

Adal signed the Uniform Submission Agreement: July 12, 1996.

Cheyenne signed the Uniform Submission Agreement: February 12, 1997.

Paradise signed the Uniform Submission Agreement: February 12, 1997.

Joint Statement of Answer filed by Respondents on or about: April 25, 1997.

SBI signed the Uniform Submission Agreement: April 24, 1997.

Vaccaro signed the Uniform Submission Agreement: March 31, 1997.

**CASE SUMMARY**

Claimants asserted the following causes of action: churning; unsuitability; negligent account supervision; violations of the Securities Exchange Act of 1934; violations of New York Stock Exchange and NASD Rules; common law fraud; breach of fiduciary duty; breach of contract; breach of third party beneficiary contracts; negligence; and breach of implied covenant. Claimants' claims involved unspecified financial products.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants have failed to state a claim upon which relief can be granted; Respondents did not violate any rules, regulations, guidelines, or other applicable laws; Claimants failed to mitigate their damages; Claimants are

barred from recovery based on the doctrines of waiver, estoppel, ratification, and/or laches; and any losses allegedly incurred by Claimants were caused by market forces beyond the control of Respondents.

### **RELIEF REQUESTED**

Claimants requested:

- a. Compensatory damages in the amount of \$75,000.00, together with interest thereon;
- b. Reasonable attorneys' fees and expenses;
- c. Costs and disbursements of this action; and
- d. Such other and further relief as is just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety, and that Respondents be awarded their costs and reasonable attorneys' fees incurred in defense of this matter.

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

By letters dated March 5, 2002 and October 25, 2002, the parties were asked to provide NASD Dispute Resolution with a status of this matter. Claimants' counsel submitted a letter dated November 29, 2002, requesting additional time to submit agreeable dates for the scheduling of hearings in this arbitration. By letter dated January 17, 2003, the parties were advised of the Panel's Order to submit mutually agreeable hearing dates by February 28, 2003 or this arbitration would be dismissed. To date, the parties have not provided any agreeable dates. After due consideration, and in accordance with its Order, the Panel has decided to dismiss this arbitration in its entirety, with prejudice.

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.

### **AWARD**

After considering the pleadings, as well as the parties' failure to comply with the Panel's Order to provide mutually agreeable hearing dates, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are hereby dismissed in their entirety, with prejudice.

2. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 150.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Smith Barney Inc. is a party.

Member surcharge = \$ 300.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

Feb. 26 & 27 and Mar. 5 & 6, 1998, adjournment by Respondents = \$ 500.00

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$300.00 = \$ 300.00

Pre-hearing conference: September 5, 1997 1 session

One (1) Pre-hearing session with Panel x \$500.00 = \$ 500.00

Pre-hearing conference: June 18, 1997 1 session

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Total Forum Fees = \$ 800.00

The Panel has assessed all of the forum fees jointly and severally against Claimants.

### **Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 150.00

Forum Fees = \$ 800.00

Total Fees	= \$ 950.00
<u>Less payments</u>	<u>= \$ 650.00</u>
Balance Due NASD Dispute Resolution	= \$ 300.00

2. SBI is solely liable for:

<u>Member Fees</u>	<u>= \$ 300.00</u>
Total Fees	= \$ 300.00
<u>Less payments</u>	<u>= \$ 300.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Adjournment Fee</u>	<u>= \$ 500.00</u>
Total Fees	= \$ 500.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 500.00

All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Carolyn E. Wade, Esq.	-	Public Arbitrator, Presiding Chair
Berthold H. Hoeniger, Esq.	-	Public Arbitrator
Carolyn Condo	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
\_\_\_\_\_  
Carolyn E. Wade, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Berthold H. Hoeniger, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Carolyn Condo  
Non-Public Arbitrator

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Signature Date

\_\_\_\_\_  
April 8, 2003

Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

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Berthold H. Hoeniger, Esq.	-	Public Arbitrator
Carolyn Condo	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

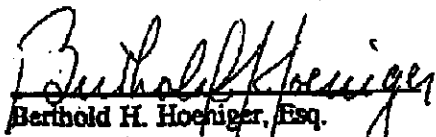
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Carolyn E. Wade, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

  
Berthold H. Hoeniger, Esq.  
Public Arbitrator

04/05/03  
Signature Date

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Carolyn Condo  
Non-Public Arbitrator

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Signature Date

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Carolyn Condo  
Non-Public Arbitrator

4-7-03  
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Signature Date

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April 8, 2003

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