

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimants

James P. and Tudor M. Austin, JTWROS

98-00137

Name of Respondents

Salomon Smith Barney, Inc.
John F. Habig

REPRESENTATION

For Claimants James P. Austin and Tudor M. Austin (referred to collectively as "Claimants") appeared Robert A. Shaines, Esq. from Shaines & McEachern, P.A., located in Portsmouth, New Hampshire.

For Respondent Salomon Smith Barney ("Smith Barney") and John F. Habig ("Habig") (collectively referred to as "Respondents") appeared William A. Hohausser, Esq., in-house counsel at Smith Barney, Inc., located in New York, New York.

CASE INFORMATION

Claimants' Statement of Claim was filed on January 7, 1998.
Claimants' Submission Agreement was signed on January 7, 1998.
Claimants' Reply to the Joint Statement of Answer was filed on April 30, 1998.

Smith Barney's and Habig's Joint Statement of Answer was filed on April 6, 1998.
Smith Barney's Submission Agreement was signed on April 6, 1998.
Habig did not file a Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference:	August 19, 1998	-	1 session (Full Panel)
Hearing Dates/Sessions:	December 1, 1998	-	2 sessions

December 2, 1998 - 2 sessions
December 3, 1998 - 2 sessions

The pre-hearing conference was conducted telephonically. The hearings were conducted at the offices of NASD Regulation, Inc. located in Boston, Massachusetts.

CASE SUMMARY

Claimants are husband and wife and opened a joint account in December of 1995 with Respondents. Claimants alleged that Habig violated his obligations regarding suitability by recommending they purchase of two PUTs in a highly volatile market when he knew they neither had experience or understanding regarding these type of investments. Claimants further contended that Habig purchased the second option without selling the first option and failed to clarify this issue with them. Claimants maintained that they had no experience dealing with options and that they listed their risk tolerance as moderate on their New Account and Option Suitability Form for Smith Barney. Claimants alleged that the first investment Habig recommended was the purchase of a LONG PUT. Claimants maintained that Habig suggested that they invest in second PUT which they agreed to under the mistaken belief that they had made a \$25,000.00 profit by selling the first PUT. Claimants alleged that both PUTs expired in March of 1997 and were worthless.

Respondents denied all of Claimants' allegations. Respondents maintained that Claimants were wealthy and sophisticated investors and had previously traded foreign currencies. Respondents further maintained that Claimants' investment objectives allowed for speculation and, therefore, the equity options were suitable. Respondents contended that Claimants were aware of the financial risks of equity options. Respondents further contended that Habig's first option recommendation occurred after the Claimants insisted that they wished to speculate. Respondents maintained that Habig then introduced the subject of options and went over the risks and rewards in great detail.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$100,000.00, plus treble damages, interest, costs and attorney's fees.

Respondents requested that all claims be dismissed in their entirety.

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 original remains on file with the NASD.

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure ("Code"), the panel found subject matter jurisdiction over the entire matter.
2. The panel found that Habig was required to file a Submission Agreement with NASD Regulation, Inc. pursuant to Rule 10314(b) of the Code.

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. Claimants' claims are denied.
2. Respondents' request for an affirmative order of expungement is denied.

OTHER COSTS

Pursuant to Rule 10333 of the Code of Arbitration Procedure Smith Barney has paid to NASD Regulation, Inc. the \$1,500.00 member surcharge, \$600.00 pre-hearing processing fee, and \$2,500.00 hearing processing fee previously invoiced.

FORUM FEES

Pursuant to Rule 10332(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. will retain the \$200.00 non-refundable filing fee deposited by Claimants and have assessed the following Forum Fees:

Pre-hearing Conference at \$750.00 per session	\$ 750.00
6 Hearing Sessions at \$750.00 per session	<u>\$4500.00</u>
Total	\$5250.00

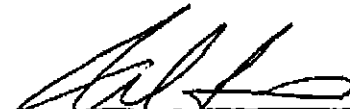
Claimants is hereby liable for the sum of \$2,625.00 representing half of the forum fees assessed. Claimant previously deposited \$750.00 with NASD Regulation, Inc. and, therefore, Claimants shall pay the balance of \$1,875.00 to NASD Regulation, Inc.

Respondent Smith Barney is hereby liable for and shall pay to NASD Regulation, Inc. the sum of \$2,625.00 representing half of the forum fees assessed.

ARBITRATION PANEL

Barton B. Skeen, Jr., Esq. - Public Chairperson
B.J. Krintzman, Esq. - Public Arbitrator
Mark J. Gianno, CPA - Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE



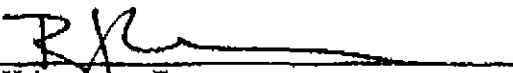
Mark J. Gianno, CPA
Industry Arbitrator

Date of decision: _____

ARBITRATION PANEL

Barton B. Skeen, Jr., Esq. - Public Chairperson
B.J. Krintzman, Esq. - Public Arbitrator
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CONCURRING ARBITRATOR'S SIGNATURE



B.J. Krintzman, Esq.
Public Arbitrator

Date of decision: _____

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CONCURRING ARBITRATOR'S SIGNATURE /


Barton B. Skeen, Jr., Esq.
Chairperson-Public Arbitrator

Date of decision: _____