

AWARD
NASD Regulation, Inc.

George and Jo Bradley Witte,

Claimants,

and

No. 98-00468

Timothy Oliver and
Smith Barney, Inc.

Respondents,

REPRESENTATION

Claimants George and Jo Bradley Witte represented themselves.

Respondents Timothy Oliver and Smith Barney, Inc. were represented by Etta Gumbs, Esquire of Smith Barney, Inc.

CASE INFORMATION

The Statement of Claim was filed on or about February 6, 1998. Claimants' Submission Agreement was signed on February 2, 1998

Statement of Answer was filed by Respondents on or about March 23, 1998. The NASD has no record of Respondents' Submission Agreements.

HEARING INFORMATION

There were no Pre-Hearing Conferences. The hearing was held on January 12, 1999 for two (2) sessions and January 13, 1999 for one (1) session for a total of three (3) sessions in Dallas Texas.

CASE SUMMARY

The Claimants alleged that Respondent Oliver, while employed as an agent for Smith Barney, Inc., made unsuitable recommendations, unauthorized stock purchases and breached his fiduciary duty to the Claimants. Further, the Claimants allege that Respondent Smith Barney failed to adequately supervise Respondent Oliver. Specifically, the Claimants alleged that Oliver was seeking high current income and therefore was interested mainly in fixed income securities. Respondent Oliver instead decided to place almost 75% of his portfolio into stocks. In addition, Respondent Oliver placed the Claimants' on margin, purchased unsuitable technology stocks and short sold stocks.

Respondents denied the material allegations in the Statement of Claim, alleging that the Claimant George Witte was an aggressive investor seeking to speculate in the stock market. The Respondents further allege that the Claimant George Witte at all times maintained control over the account and that the final decision with each security purchased was made by the Claimant. In addition, the Respondents state there is no fiduciary relationship between the two parties because the accounts in question were non-discretionary and the Respondent did not maintain dominance over the accounts..

RELIEF REQUESTED

The Claimants requested entry of an award against Respondents of actual damages in the amount of \$73,315, punitive damages of \$150,630 and lost opportunity interest, attorney fees and costs in an amount decided fair by the arbitrators.

The Respondents requested that the claim be denied in its entirety.

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). That the Statement of Claim of Claimants, George C. Witte and Jo Bradley Witte, is dismissed and denied in its entirety with prejudice;
- (2). That other than forum fees, which are addressed below, all other claims and requests for relief are dismissed with prejudice.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Three (3) hearing sessions x \$750.00 per hearing session = \$2,250.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$200.00 non-refundable claim-filing fee and shall retain, as forum fees, the hearing session deposit in the sum of \$750.00 paid by the Claimants George Witte and Jo Bradley Witte.

Respondents, Timothy D. Oliver and Smith Barney, Inc. are jointly and severally liable for and shall pay the forum fees in this matter and shall pay the sum of \$1,500.00 to NASD Regulation, Inc.

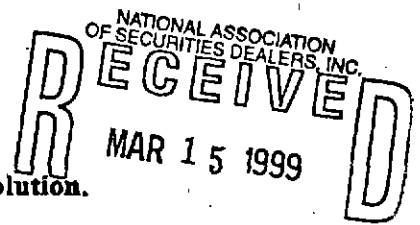
OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent, Smith Barney, Inc. has paid to the NASD Regulation, Inc., Office of Dispute Resolution, the \$1,500.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code, Respondent, Smith Barney, Inc. has paid to the NASD Regulation, Inc., Office of Dispute Resolution, the \$600.00 pre-hearing process fees previously invoiced.

Pursuant to Rule 10333 of the Code, Respondent, Smith Barney, Inc. shall pay to the NASD Regulation, Inc., Office of Dispute Resolution, the \$2,500.00 hearing process fees previously invoiced.

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 98-00468; Award Page 4 of 4



Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

Concurring Arbitrators' Signatures

Concurring Arbitrators' Signature

Date

P. Michael Armstrong

P. Michael Armstrong
Public Arbitrator
Chairperson

3-10-99

Richard A. Knudsen
Public Arbitrator
Panelist

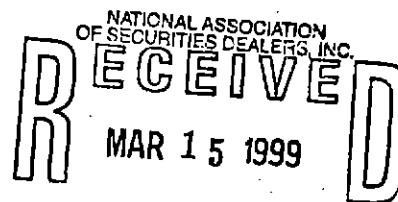
Riley R. Robbins
Industry Arbitrator
Panelist

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Concurring Arbitrators' Signatures

Concurring Arbitrators' Signature

Date



P. Michael Armstrong
Public Arbitrator
Chairperson

Richard A. Knudsen

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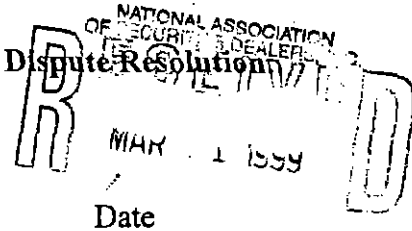
March 11, 1999

Riley R. Robbins
Industry Arbitrator
Panelist

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Concurring Arbitrators' Signatures

Concurring Arbitrators' Signature



P. Michael Armstrong
Public Arbitrator
Chairperson

Richard A. Knudsen
Public Arbitrator
Panelist

Riley R. Robbins
Industry Arbitrator
Panelist

A large, stylized handwritten signature is written over a horizontal line. The signature is cursive and appears to be "Riley R. Robbins".