

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Wesley G. Tobaben, Claimant v. Timothy J. Gramatovich, Smith Barney, Inc. (aka Solomon Smith Barney, Inc.) Frank Dworsky, Nicholas A. Corso, and Peritus Asset Management, Inc., Respondents

Case Number: 99-03114

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimant:

Elizabeth Lowery, Esq.
Fields, Fehn & Sherwin
Los Angeles, California

For Respondents Timothy J. Gramatovich and
Peritus Asset Management Inc.:

Ian M. Guthrie, Esq.
Reetz, Fox & Bartlett, LLP
Santa Barbara, California

For Respondents Smith Barney, Inc. (hereinafter
Solomon Smith Barney, Inc.), Frank Dworsky,
and Nicholas A. Corso:

Christopher B. O'Malley, Esq.
Solomon Smith Barney, Inc.
New York, New York

CASE INFORMATION

Statement of Claim filed: June 30, 1999

Claimant's Uniform Submission Agreement signed: June 21, 1999

Joint Statement of Answer filed by Respondents Timothy J. Gramatovich and Peritus Asset Management, Inc.: October 28, 1999

Joint Statement of Answer filed by Respondents Solomon Smith Barney, Inc. and Nicholas A. Corso: October 7, 1999

Amended Joint Statement of Answer filed by Respondents Solomon Smith Barney, Inc., Nicholas A. Corso, and Frank Dworsky: October 15, 1999

Respondent Timothy J. Gramatovich's Uniform Submission Agreement signed: October 26, 1999

Respondent Solomon Smith Barney, Inc.'s Uniform Submission Agreement signed: October 7, 1999

Respondent Frank Dworsky's Uniform Submission Agreement signed: October 15, 1999

Respondent Nicholas A. Corso's Uniform Submission Agreement signed: October 6, 1999

Respondent Peritus Asset Management, Inc.'s Uniform Submission Agreement signed: October 26, 1999

CASE SUMMARY

Claimant alleged breach of fiduciary duty, unsuitability, and misrepresentation.

Respondents Timothy J. Gramatovich and Peritus Asset Management Inc. denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

Respondents Solomon Smith Barney, Inc., Nicholas A. Corso, and Frank Dworsky denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested compensatory damages of \$ 85,000.00, interest, and attorney fees.

Respondents Timothy J. Gramatovich and Peritus Asset Management, Inc. requested dismissal of the Claimant's Statement of Claim in its entirety.

Respondents Solomon Smith Barney, Inc., Nicholas A. Corso, and Frank Dworsky requested dismissal of the Claimant's Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On May 21, 2000, NASD Dispute Resolution received notice from Claimant that all claims against Respondents Solomon Smith Barney, Inc., Nicholas A. Corso, and Frank Dworsky were withdrawn with prejudice.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents Timothy J. Gramatovich and Peritus Asset Management, Inc. are liable to and shall pay Claimant \$85,000.00 in compensatory damages.
- 2) Each party shall bear its own costs, including attorney's fees.
- 3) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 225.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events, which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Solomon Smith Barney, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,000.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 1,500.00
Total Member Fees	= \$ 3,100.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

4 Hearing sessions @ \$750.00/session	= \$ 3,000.00
Hearings:	
May 22, 2001	2 sessions
May 23, 2001	2 sessions
Total Forum Fees	= \$ 3,000.00

1. The Panel assessed \$1,500.00 of the forum fees to Claimant Wesley G. Tobaben.
2. The Panel assessed \$1,500.00 of the forum fees jointly and severally to Respondents Timothy J. Gramatovich and Peritus Asset Management, Inc.

Fee Summary

1. Claimant Wesley G. Tobaben is charged with the following fees and costs:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$1,500.00
Total Fees	= \$1,725.00
<u>Less Payments</u>	<u>= \$ (975.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 750.00

2. Respondent Solomon Smith Barney, Inc. is charged with the following fees and costs:

Member Fees	= \$ 3,100.00
<u>Less Payments</u>	<u>= \$(3,100.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ - 0 -

3. Respondents Timothy J. Gramatovich and Peritus Asset Management Inc. are charged jointly and severally with the following fees and costs:


<u>Forum Fees</u>	<u>= \$1,500.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,500.00

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


ARBITRATION PANEL

Kenan Oldham, Esq.	-	Public, Presiding Chair
Morton R. Field	-	Public Arbitrator
Roger T. Verhage	-	Non-Public Arbitrator

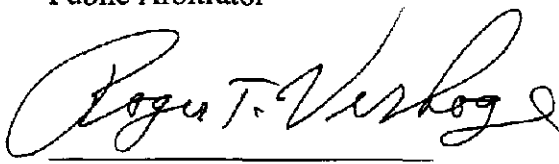
Concurring Arbitrators' Signatures


Kenan Oldham, Esq.
Chair, Public Arbitrator

5/25/01
Signature Date


Morton R. Field
Public Arbitrator

5/25/01
Signature Date


Roger T. Verhage
Industry Arbitrator

5/25/01
Signature Date

5.25.01
Date of Service