

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Michael Fishman, as Trustee of the Local 144 Service Employees International Union Staff Pension Plan, (Claimant) vs. Salomon Smith Barney Asset Management, Inc. and Smith Barney Asset Management, Inc., (Respondents)

Case Number: 99-04276

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Michael Fishman, as Trustee of the Local 144 Service Employees International Union Staff Pension Plan, hereinafter referred to as "Claimant": Mark D. Risk, Esq., D'Agostino, Levine & Landesman, L.L.P., New York, NY.

Respondents, Salomon Smith Barney Asset Management, Inc. ("Salomon") and Smith Barney Asset Management, Inc. ("Smith Barney"), hereinafter collectively referred to as "Respondents": Susan E. Harkins, Esq., Senior Vice President, Salomon Smith Barney Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: September 17, 1999.

Response to Motion to Dismiss filed by Claimant on or about: March 27, 2000.

Claimant signed the Uniform Submission Agreement: September 10, 1999.

Statement of Answer and Motion to Dismiss filed by Respondents on or about: January 5, 2000.

Salomon did not sign a Uniform Submission Agreement.

Smith Barney did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty and violation of the Employee Retirement Income Security Act of 1974 ("ERISA"). Claimant's claim 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: the Statement of Claim fails to state a cause of action; the Statement of Claim should be dismissed for failure to join necessary parties; the Statement of Claim is devoid of any factual allegation and should be dismissed on

its face; the claims alleged are barred by the doctrines of waiver, estoppel, and ratification; the claims alleged are ineligible for arbitration under section 10304 of the NASD Code of Arbitration Procedure; this arbitration should be dismissed or, in the alternative, stayed pursuant to section 10106 of the NASD Code of Arbitration Procedure; the claims alleged are barred by the applicable statute of limitations and/or the doctrine of laches; Respondents were not fiduciaries, did not owe fiduciary obligations to Claimants, and did not breach any fiduciary obligations to Claimants; Respondents did not breach any other obligations to Claimant; Claimant failed to mitigate its purported damages; the culpable conduct of Claimant and others contributed to causing the damages alleged in the Statement of Claim and any recovery against Respondents must be proportionately reduced; Claimant had knowledge of and voluntarily assumed the risks incident to the matters of which it complains; and punitive damages and attorneys' fees may not be awarded in this arbitration.

#### **RELIEF REQUESTED**

Claimant requested an Award as follows:

- a. Declaring that Respondents breached their fiduciary duty to Claimant under ERISA;
- b. Directing that Respondents restore to Claimant all of the losses resulting from their breach of fiduciary duty in the approximate amount of \$700,000.00, plus interest; and
- c. Directing that Respondents pay all reasonable attorneys' fees and costs incurred by Claimant in the pursuit of this claim, including the costs and fees related to the arbitration proceeding.

Respondents requested that the claims set forth in the Statement of Claim be dismissed, that all costs be assessed against Claimant, and that the Panel award Respondents such further relief as it deems appropriate.

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

Respondents did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration. The Panel determined that pursuant to the provisions of the Investment Management Agreement and the Trading Authorization governing Claimant's account and, Respondents having answered the claim, appeared and testified at the hearing, the Panel has jurisdiction over this matter and Respondents are therefore bound by the determination of the Panel on all issues submitted.

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, the testimony and evidence presented at the hearing, and the pre-hearing and post-hearing submissions of the parties (which included legal arguments, statutory references, and case law applicable to ERISA), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby denied in their entirety.
2. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 375.00
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#### **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 \$450.00	= \$ 450.00
Pre-hearing conference: November 21, 2000	1 session

One (1) Pre-hearing session with Panel x \$1,200.00	= \$1,200.00
Pre-hearing conference: May 24, 2000	1 session

Six (6) Hearing sessions x \$1,200.00	= \$7,200.00
Hearing Dates: December 6, 2000	2 sessions
December 7, 2000	
December 8, 2000	2 sessions

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Total Forum Fees	= \$8,850.00
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1. The Panel has assessed \$4,425.00 of the forum fees against Claimant.
2. The Panel has assessed \$4,425.00 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$4,425.00
Total Fees	= \$4,800.00
Less payments	= \$1,575.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,225.00

2. Respondents be and hereby are jointly and severally liable for:

Forum Fees	= \$4,425.00
Total Fees	= \$4,425.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,425.00


All balances are due and payable to NASD Dispute Resolution, Inc.

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**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.

  
Richard N. Goldstein, Esq.  
Public Arbitrator, Presiding Chair

2/22/01  
Signature Date

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Martin H. Zern, J.D.  
Public Arbitrator

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Signature Date

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Gerard F. Cameron  
Industry Arbitrator

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Signature Date

March 1, 2001  
Date of Service (For NASD office use only)

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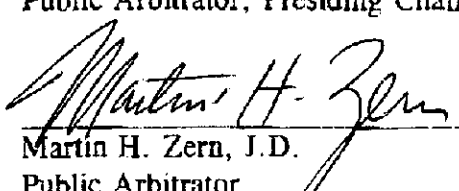
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Richard N. Goldstein, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

  
Martin H. Zern, J.D.  
Public Arbitrator

2/20/01  
\_\_\_\_\_  
Signature Date

Gerard F. Cameron  
Industry Arbitrator

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

March 1, 2001

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Concurring Arbitrators' Signatures

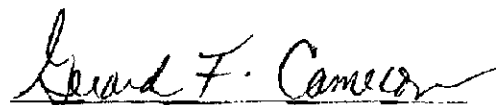
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Richard N. Goldstein, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Martin H. Zern, J.D.  
Public Arbitrator

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

  
\_\_\_\_\_  
Gerard F. Cameron  
Industry Arbitrator

2-21-01  
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Signature Date

March 1, 2001  
Date of Service (For NASD office use only)