

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of Arbitration Between	}	NASD No. 88-03028
JOSEPH S. MCKINSEY		
Claimant		
v.		
SMITH BARNEY HARRIS UPHAM & CO., INC.	}	
Respondent		

CASE SUMMARY

In a claim filed with the NASD on September 28, 1988, Claimant Joseph S. McKinsey (Claimant) alleged that contrary to Claimant's instructions, his IRA funds were invested in an unsuitable investment in his individual retirement account. Further, Respondent Smith Barney Harris Upham & Co. (Smith Barney, violated its fiduciary duty to Claimant by purchasing a National Resources Management (NRM) limited partnership for Claimant's IRA.

Smith Barney maintains that Claimant met all suitability requirements for the purchase of the NRM partnership and that he acknowledged this by executing the subscription agreement concurrent with his purchase. Claimant is therefore, seeking reimbursement of his investment from Smith Barney merely due to the decline in the market price of oil and gas and the resultant decline in the value of his holdings in NRM.

RELIEF REQUESTED

Claimant requested a refund of his entire original investment in NRM of approximately \$17,000, plus costs and attorney's fees. Respondent requested dismissal of the claim and assessment of costs and attorney's fees against Claimant. At the outset of the hearing, Smith Barney, through counsel, withdrew its claim for attorney's fees and the arbitrators acknowledged this fact.

AWARD

On Thursday, June 15, 1989 in Chicago, Illinois during a hearing lasting one session, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on September 23, 1988 by Claimant Joseph S. McKinsey and on November 23, 1988 by Judith C. Greene on behalf of Respondent Smith Barney Harris Upham & Co., Inc.

The arbitration panel, having considered the pleadings, the testimony and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The claim asserted by Claimant against Smith Barney shall be and is hereby dismissed in its entirety;

2. The parties shall each bear their respective costs and expenses including any attorneys fees incurred in this proceeding; and

3. Pursuant to Section 43(b) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain, as forum fees, the \$400.00 filing fee previously deposited with the NASD by Claimant.

BY THE PANEL

Dated: \_\_\_\_\_

s/s

\_\_\_\_\_  
Arthur Medow, Esq.  
Presiding Chair

Dated: \_\_\_\_\_

s/s

\_\_\_\_\_  
Herbert Neuer, Esq.

Dated: 6-27-89

s/s

\_\_\_\_\_  
Ms. Lynne S. Diamond