

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Donald B. and Kathryn M. Rubin

90-02594

Name of Respondent(s)

Smith Barney Harris Upham & Co., Inc.
Jeremiah Burns

REPRESENTATION

For Claimants: Cynthia M. Clarke, Esq. of the law firm of Sullivan & Worcester

For Respondents: Paul K. Barenholtz, Esq.

CASE INFORMATION

Statement of Claim filed: September 14, 1990.

Claimants' Submission Agreements signed on: September 10, 1990.

Joint Statement of Answer filed by Respondents Smith Barney Harris Upham & Co., Inc. and Jeremiah Burns on: March 6, 1991.

Respondent Smith Barney Harris Upham & Co., Inc.'s Submission Agreement signed on: March 6, 1991.

Respondent Jeremiah Burns's Submission Agreement signed on: March 19, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: October 22, 1991-2 Sessions
October 23, 1991-1 Session

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Hearing Location: National Association of Securities Dealers, Inc. office located in Boston, Massachusetts.

CASE SUMMARY

Claimants alleged that Respondents failed to notify them of a pending tender offer for shares of a corporation whose stock the Claimants had purchased through Respondents, and as a result the Claimants held the stock beyond the close of the tender; the day following the deadline their shares dropped to one-third of their former value.

Respondents maintained that they had recommended to the Claimants on several occasions that they either sell or tender their shares, but that the Claimants rejected the recommendation.

RELIEF REQUESTED

Claimant requested actual damages of \$42,000.00 plus interest, attorney's fees, and costs. Respondents requested that the claim be dismissed 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. The claims of the Claimants Donald B. Rubin and Kathryn M. Rubin against Respondents Smith Barney, Harris Upham & Co., Inc. and Jeremiah S. Burns be and hereby are dismissed in their entirety.
2. The parties shall each bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed:

3 Sessions x \$400.00 = \$1,200.00 minus hearing session deposit of \$400.00 = net \$800.00

The Claimants Donald B. Rubin and Kathryn M. Rubin be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$200.00 to represent forum fees and the Respondents Smith Barney Harris Upham & Co., Inc. and Jeremiah Burns be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$600.00 to represent forum fees. The NASD

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shall retain the \$120.00 claim filing fee previously deposited by the Claimants.

Fees are payable to the National Association of Securities Dealers, Inc.

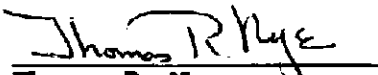
ARBITRATORS SIGNATURE

Name


Public/Industry


David B. Salzman, Esq.

Public


Thomas R. Nye

Public


Theodore Turner

Industry

Dated by the NASD: December 11, 1991