

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between	x
Ralph and Jane Nicholls,	x
Claimants,	x
vs.	x CASE NO.
William J. Leahey, and	x 90-02637
Smith Barney, Harris Upham & Co., Inc.,	x
Respondents.	x AWARD
	x
	x

CASE SUMMARY

Claimants, Ralph and Jane Nicholls ("Claimants"), alleged that Respondent William J. Leahey's ("Leahey"), an employee of Respondent Smith Barney, Harris Upham & Co., Inc. ("Smith Barney"), recommendation, and the Claimants' subsequent purchase, of 1400 shares of First Executive Corporation was unsuitable in light of the Claimants' financial situation. The Claimants alleged that Leahey misrepresented the nature and risks involved with this investment, and that First Executive Corp. was a speculative, high risk investment.

Leahey and Smith Barney contended that Leahey always acted responsibly and in good faith. The Respondents further contended that the recommendation of First Executive was based upon the information available at the time, and that the trades were made with the intention of upgrading investment quality and return, and with the knowledge of the Claimants.

RELIEF REQUESTED

Claimants requested actual damages of approximately \$28,000.00. Leahey and Smith Barney requested dismissal of all claims made against them, plus costs.

AWARD

On April 16, 1991, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimant Ralph and Jane Nicholls on August 29, 1990, by Respondent William J. Leahey on December 31, 1990, and by Respondent Smith Barney, Harris Upham & Co., Inc. on December 27, 1990. The initial claim was filed on September 20,


1990. The hearing was conducted at the offices of the National Association of Securities Dealers, Inc. in New York City, NY, and consisted of one (1) hearing session. The arbitrator having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondent William J. Leahey be and hereby are dismissed in their entirety.
2. All claims against Respondent Smith Barney, Harris Upham & Co., Inc. be and hereby are dismissed in their entirety.
3. The parties each shall bear their respective costs, including attorneys' fees.

Forum Fees:

4. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$400.00 filing fee previously deposited by the Claimants, as costs of the one (1) hearing session conducted in this matter.

CONCURRING ARBITRATOR


Edward M. Sills

Dated: *April 16th*, 1991