

Bank

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

William B. Bayliss
Sally A. Bayliss

No. 90-03379

Name of Respondents

Smith Barney, Harris Upham & Co.
Allan E. Schroeder

REPRESENTATION OF PARTIES

For Claimants: David H. Hutchinson, Esq. of Machulak,
Hutchinson, Robertson & Dwyer, S.C.

For Respondents: Larry H. Irom, Esq., Vice President, Law
Department, Smith Barney, Harris Upham & Co.

CASE INFORMATION

Statement of Claim filed: December 3, 1990.

Claimants' Submission Agreement signed on: November 26, 1990.

Joint Statement of Answer filed by Respondents, Smith Barney,
Harris Upham & Co. and Allen E. Schroeder on: January 30, 1991.

Respondent Smith Barney, Harris Upham & Co. Submission Agreement
signed on: January 28, 1991.

Respondent Allan E. Schroeder Submission Agreement signed on:

February 1, 1991.

HEARING INFORMATION

Hearing dates: April 29, 1992. Two (2) sessions.
April 30, 1992. Two (2) sessions.
July 28, 1992. Two (2) sessions.
July 29, 1992. Two (2) sessions.
September 1, 1992. Two (2) sessions.
September 2, 1992. Two (2) sessions.

Hearing Location: Milwaukee, Wisconsin.

CASE SUMMARY

Claimants, William B. Bayliss and Sally A. Bayliss ("Claimants") alleged violation of Section 10(b) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 promulgated thereunder, violations of Article III of the Rules of Fair Practice promulgated by the National Association of Securities Dealers, violation of New York Stock Exchange Rules, violation of Wisconsin Uniform Securities Law, Section 551.41 of the Wisconsin Statutes, violation of State Law Fraud, breach of fiduciary duty, violation of Federal RICO, 18 U.S.C. Sections 1961, 1341, and 1962, and violation of State RICO, Section 946.83 of the Wisconsin Statutes by Respondents Smith Barney, Harris Upham & Co. and Allan E. Schroeder ("Respondents").

In their joint Statement of Answer, Respondents denied every material allegation as set forth in the Statement of Claim. In addition, Respondents asserted the following affirmative defenses:

1. Claimants had knowledge of and assumed the risks inherent in trading securities. The losses sustained were caused by and arose out of such risks.
2. Claimants authorized, consented to or acquiesced in the execution of each transaction and are estopped from bringing this action.
3. Claimants, by their own conduct, have waived any and all claims in the Statement of Claim.
4. Claimants are barred from any recovery because they failed to exercise the degree of due diligence required in the handling and monitoring of their securities transactions.

Claimants.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with the NASD.

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. Respondents, Smith Barney, Harris Upham & Co. and Allan E. Schroeder, are jointly and severally liable for, and shall pay to Claimants, William B. Bayliss and Sally A. Bayliss, the sum of \$58,030.00 on Claimants' claims, together with simple interest at the rate of 5% from the date of this award until paid:

2. The parties shall each pay their own respective costs and attorneys' fees of this proceeding; and

OTHER COSTS

3. Claimants are responsible for and shall pay one-half of the NASD forum fees of this proceeding, and the Respondents are jointly and severally liable for and shall pay the remaining one-half of such fees, all as set forth more fully below.

FORUM FEES

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

12 hearing sessions X \$750.00 = \$9,000.00

5. Claimants ratified each and every transaction in their account by failing to object to the transaction.

RELIEF REQUESTED

Claimants requested an award in their favor, and against Respondents jointly and severally, as follows:

1. On all Claims:

(a) For the return of all commissions charged by the Respondents during the period from October, 1987 through May, 1990 and the payment of all margin interest charged against Claimants' account from all transactions in an amount of approximately \$150,000.00;

(b) For all legal interest and the costs and disbursements of this action including reasonable attorneys' fees;

2. Further, for punitive damages in an approximate additional amount of \$350,000.00;

3. Further, on the third claim, based on State Securities Law Violations for the Claimants' Statutory, reasonable attorneys' fees, costs and disbursements and preaward interest;

4. Further, on the sixth claim based on Federal RICO, for treble damages in the amount of approximately \$450,000.00, plus legal interest and the Claimants' reasonable attorneys' fees, costs and disbursements;

5. Further, on the seventh claim based on State RICO, for double damages in an amount of approximately \$300,00.00 plus Claimants' reasonable attorneys' fees, costs and disbursements; and.

6. For such other relief as the panel deemed appropriate.

Respondents requested that the Statement of Claim be dismissed and all reasonable attorneys' fees and costs be assessed against

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Pursuant to Section 43 (c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$3,750.00 are assessed against Claimants.

Additional forum fees in the amount of \$4,500.00 are assessed jointly and severally against Respondents.

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

CONCURRING ARBITRATORS

Dated:

September 24, 1992

/s/Morton J. Schmidt
Morton J. Schmidt
Presiding Chair
Public Arbitrator

September 23, 1992

/s/David G. Kingstad
David G. Kingstad
Public Arbitrator

September 25, 1992

/s/Terry F. Peppard
Terry F. Peppard
Industry Arbitrator

Date of Service by the NASD:

September 29, 1992