

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

PUBLIC

In the Matter of the Arbitration Between

Name of Claimant(s)

Martin L. & Margaret L. Waldman

91-00565

Name of Respondent(s)

Smith Barney Harris Upham & Co., Inc.
Arlid T. Ostensen

REPRESENTATION

For Claimants: Thomas D. Giachetti, Esq. of Stark & Stark in Princeton, New Jersey.

For Respondent Smith Barney, Harris Upham & Co., Inc.: Susan E. Harkins, Esq. of Smith Barney, Harris Upham & Co., Inc. in New York City.

For Respondent Arlid T. Ostensen: Jeffrey H. Ballaban, Esq. of Tenzer, Greenblatt, Fallon & Kaplan in New York City.

CASE INFORMATION

Statement of Claim filed: February 20, 1991.

Claimants' Submission Agreement signed on: February 13, 1991

Submission Agreement of Smith Barney, Harris Upham & Co., Inc. signed on: April 29, 1991.

Statement of Answer of Smith Barney, Harris Upham & Co., Inc. filed on: April 30, 1991.

Submission Agreement of Arlid T. Ostensen signed on: June 17, 1991.

Statement of Answer of Arlid T. Ostensen filed on: May 31, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: November 13, 1991/two sessions
November 14, 1991/two sessions
January 8, 1992/two sessions
January 9, 1992/two sessions

March 10, 1992/two sessions
March 13, 1992/two sessions
March 17, 1992/two sessions
May 14, 1992/two sessions

Hearing Location: New York City

CASE SUMMARY

Claimants Martin L. Waldman and Margaret L. Waldman alleged that Respondents Smith Barney, Harris Upham & Co., Inc. and Arlid T. Ostensen churned their accounts, executed unauthorized trades, and placed Claimants in unsuitable limited partnerships such as Shared Imaging Partners and Dennis Commodities LP. Claimants further alleged that Respondents misrepresented and purchased high risk securities including First Executive stock and warrants, disregarding Claimants' stated investment objective of preservation of capital. Claimants also alleged that Respondent Arlid T. Ostensen haphazardly executed trades using maximum margin leverage and asserted that Smith Barney's local branch management and compliance department failed to supervise the broker's activities.

Respondent Smith Barney, Harris Upham & Co., Inc. maintained that every transaction in the Claimants' accounts was authorized by the Claimants and suitable to their investment objectives, that Mr. Waldman was an experienced, sophisticated investor, that the Claimants received confirmations and monthly statements of all trades, and that the majority of the transactions of which Claimants complained occurred when their account was with Mr. Ostensen at Drexel Burnham Lambert, Inc.

Respondent Arlid T. Ostensen maintained that all investments made for the Claimants were fully explained, including all attendant risks, and that the accounts in questions were not discretionary so he had no control over them. Respondent Ostensen further maintained that the losses incurred by the Claimants were the result of uncontrollable market factors and that the Claimants never raised a single complaint in their business with him, ratifying all transactions by receipt of trade confirmations and monthly account statements.

RELIEF REQUESTED

Claimants requested actual damages of \$261,067.00 plus unspecified punitive damages, attorneys' fees and costs. Respondent Smith Barney, Harris Upham & Co., Inc. requested that the claims of the Claimants be dismissed with costs assessed against them. Respondent Arlid T. Ostensen requested that the claims of the Claimants be dismissed with costs assessed against them. Respondent Ostensen further asserted a counterclaim against Martin Waldman stating that if a judgment for the recovery of money is rendered in favor of Margaret Waldman, Martin Waldman should be liable to Ostensen and a judgment

in the same amount should be rendered against Martin Waldman in favor of Ostensen since Martin Waldman controlled and directed the trading in accounts bearing Margaret Waldman's name.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Smith Barney, Harris Upham & Co., Inc. asserted a Motion to Dismiss Claimants' Claims to the extent they were based on transactions at Drexel Burnham Lambert, Inc.

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 all issues submitted for determination as follows:

- (1) Respondents Smith Barney, Harris Upham & Co., Inc. and Arlid T. Ostensen are jointly and severally liable and shall pay to the Claimants the sum of Thirty Six Thousand One Hundred Sixty Two Dollars and No Cents (\$36,162.00) plus interest from the date of this award through the date of payment of the award.
- (2) The Claimants' claim for punitive damages is denied.
- (3) The counterclaim of Arlid T. Ostensen against Martin L. Waldman is denied.
- (4) The Motion to Dismiss of Smith Barney, Harris Upham & Co., Inc. is denied.

OTHER COSTS

- (1) 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:

- (1) The NASD, Inc. shall retain the \$200.00 non-refundable filing fee and the \$750.00 hearing session deposit previously deposited by the Claimants.
- (2) Claimants are assessed an additional \$5,625.00 in forum fees.

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(3) Respondents Smith Barney, Harris Upham & Co., Inc. and Arlid T. Osterson are jointly assessed \$5,625.00 in forum fees.

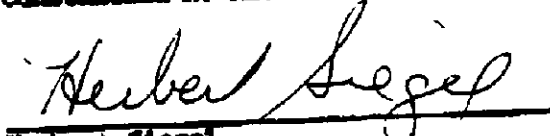
Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures



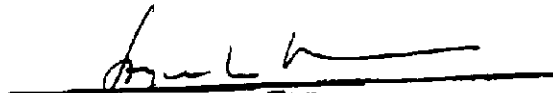
Constantine H. Patsoiris, Esq. (chairman)

Public Arbitrator



Herbert Siegel

Public Arbitrator



Joyce L. Kruger, Esq.

Industry Arbitrator

Dated: June 16, 1992