

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Letitia Baxter and Lois Sears

91-00679

Name of Respondents

Smith Barney Harris Upham & Co., Inc.
Victor DiLeo

REPRESENTATION OF PARTIES

Claimants were represented by Robert G. Hancock, Esq. of Hopp & Associates, Longmont, CO.

Respondent Smith Barney Harris Upham & Co., Inc. was represented by Susan E. Harkins, Esq. of Smith Barney Harris Upham & Co., Inc., New York, NY.

Respondent Victor DiLeo was represented by Catherine B. Mayers, Esq. of Brega & Winters, Denver, CO.

CASE INFORMATION

The Statement of Claim was filed on or about March 4, 1991. Amended Statement of Claim filed on or about May 20, 1991. Claimant Letitia Baxter's Submission Agreement signed on February 25, 1991. Claimant Lois Sears' Submission Agreement signed on May 22, 1991.

Statement of Answer filed by Respondent, Smith Barney Harris Upham & Co., Inc. on or about June 4, 1991. Respondent Smith Barney Harris Upham & Co., Inc.'s Submission Agreement signed on June 3, 1991 by Susan Harkins, Esq.

Statement of Answer filed by Respondent Victor DiLeo on or about June 25, 1991. Respondent Victor DiLeo's Submission Agreement signed on July 3, 1991.

HEARING INFORMATION

The hearing was held on Thursday, December 12, 1991 and Thursday, December 19, 1991 in Denver, Colorado during a total of five (5) sessions.

CASE SUMMARY

Claimants alleged that Respondents Smith Barney Harris Upham & Co., Inc. and Victor DiLeo breached their fiduciary duty to them; committed fraud by intentionally and deliberately misrepresenting the nature of Prospect Street High Income Fund; intentionally and deliberately concealed the speculative

nature of the securities purchased for the claimants; intentionally or recklessly failed to disclose that the securities purchased for the claimants were highly speculative; repeatedly made unsuitable purchases; failed to properly diversify the claimants' portfolio; violated COLO. REV. STAT. Sec. 11-51-123 and 125; and violated Sections 10(b) and 15(c) (1) of the Securities Exchange Act of 1934 and Rule 10(b) (5) promulgated thereunder. Claimants further alleged that Respondent Smith Barney Harris Upham & Co., Inc. is liable as a control person for the actions of Respondent Victor DiLeo.

Respondent Smith Barney Harris Upham & Co., Inc. stated that the securities complained of by the Claimants were all purchased by the Claimants while their account was at Drexel Burnham and that it should be held liable.

Respondent Victor DiLeo stated that the investments recommended were suitable for the claimants in light of the investment objectives, financial condition and experience. Respondent DiLeo further stated that he has complied with all industry standards and that claimants do not qualify for relief under the Colorado statutes.

RELIEF REQUESTED

Claimant requested an award in the amount of \$56,500.00 as compensatory damages and \$50,000.00 as punitive damages, interest, reasonable attorney's fees, costs and expenses.

Respondent Smith Barney Harris Upham & Co., Inc. requested that the Statement of Claim be dismissed.

Respondent Victor DiLeo requested that the Statement of Claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in 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 original(s) remain on file with the NASD.

Claimants and Respondent Smith Barney Harris Upham & Co., Inc. reached a settlement of the claims asserted against Smith Barney Harris Upham & Co., Inc. prior to the hearing of this matter.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim shall be and hereby is dismissed and denied in its entirety.
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain the hearing session deposit in the amount of \$550.00 previously deposited with the NASD on behalf of the Claimants. In addition the following forum fees are assessed: Claimants shall pay to the NASD the sum of \$1,325.00 as additional forum fees. Respondent Victor DiLeo shall pay to the NASD the sum of \$1,875.00 as forum fees. Forum fees are calculated at the rate of \$750.00 per hearing session.

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

Dated:

1-16-92



Carol J. Zamperini
Presiding Chair
Public Arbitrator

James J. Cronin, Esq.
Public Arbitrator

Richard L. Behr, Jr.
Industry Arbitrator

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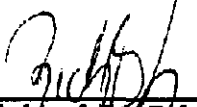
Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

Carol J. Zamperini
Presiding Chair
Public Arbitrator

James J. Cronin, Esq.
Public Arbitrator

1-13-92.


Richard L. Behr, Jr.
Industry Arbitrator

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Dated:

Carol J. Zamperini
Presiding Chair
Public Arbitrator

James J. Cronin

James J. Cronin, Esq.
Public Arbitrator

Richard L. Behr, Jr.
Industry Arbitrator

January 15, 1992
