

N.A.S.D.
NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Hester Locklair and Dan Locklair

AMENDED STIPULATED AWARD

91-01026

Name of Respondents

Smith Barney Harris Upham & Co., Inc.
John Davidson

REPRESENTATION

For Claimants, ("the Locklairs"): David C. Smith, Esq. of Allman Spry Humphreys Leggett et al.

For Respondent, John Davidson ("Davidson"): pro se.

CASE INFORMATION

Statement of Claim filed on: 4/3/91.

Claimants' Submission Agreement signed on: 3/28/91.

Statement of Answer of Davidson filed on: 6/11/91.

Respondent, Davidson's Submission Agreement signed on: 6/4/91.

Respondent, Smith Barney's Statement of Answer filed: May 23, 1991

Respondent, Smith Barney's Submission Agreement signed on: 5/23/91 by Larry Irom on behalf of the firm.

HEARING INFORMATION

Pre-Hearing Conference held: 12/31/91-One (1) session.

Hearing Date/Sessions: March 10, 1992-One (1) session.

Hearing Location: Charlotte, N.C.

CASE SUMMARY

Claimants alleged that Respondent, Davidson, churned and gave false representations, in violation of Section 17(a) of the Securities Act, 15 U.S.C., Section 77 (Q) (a), Section 7(c) and 10(b) of the Exchange Act; 15 U.S.C. 78(g) and 79(j) (b), Rule 10 (b) (5) and N.C.G.S. Section 78A-56 in connection with Claimants' account at Smith Barney Harris Upham and Co., where Davidson was an account executive. Additionally, Claimants alleged that Respondent engaged

in trading on margin in speculative securities that were unsuitable for Claimants and that Respondents are guilty of fraud, deceit, breach of fiduciary duty and negligence.

Respondents, denied all allegations of wrongdoing contained in the Statement of Claim.

RELIEF REQUESTED

Claimants requested an award of \$280,000 plus interest and attorneys' fees plus \$100,000 punitive damages.

Respondents requested dismissal of the Claim.

OTHER ISSUES CONSIDERED & DECIDED

1. On March 9, 1992 the NASD was informed that Claimants had reached a settlement with Respondent, Smith Barney Harris Upham and Co., Inc.

2. Claimants and Respondent, Davidson, reached an agreement in settlement of all claims on March 10, 1992, prior to the commencement of the hearing. The agreement was confidential as to sums to be paid by Davidson, to the Claimants, however, the agreement contained a confession of judgment, i.e., if breached by Davidson the matter can be collected by a judgment from a court of competent jurisdiction. Subsequent to the issuance of the Stipulated Award, reflecting the foregoing, the NASD was informed by Claimants that Davidson had breached the terms of the settlement. Claimants then submitted the attached "Motion of Claimant That Monetary Amount Be Specified In Arbitration Award" for decision by the panel.

3. The parties present at the hearing 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, those parties agreed to receive conformed copies of the Award while the original remain on file with the NASD.

AWARD

The arbitration panel, having considering the pleadings, and reviewed the attached "Motion of Claimants That Monetary Amount Be Specified In Arbitration Award" and response of Davidson to said motion, has determined in full and final resolution of the issues submitted for determination as follows:

1. The undersigned panel hereby grants the attached Motion which contains as Exhibit #1, a "Memorandum of Settlement Agreement With John Davidson", signed by Respondent, John Davidson and incorporates said motion, response and Memorandum of Settlement by reference into this Award, and, therefore, rules that Respondent, John Davidson, shall pay to Claimants, Dan and Hester Locklair, the amount of \$20,000.00, in accordance with said settlement agreement.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the N.A.S.D., Inc. shall retain the \$200.00 non-refundable deposit previously deposited by Claimants and the following forum fees are assessed:

One (1) Pre-Hearing Telephone Conference = \$300.00

One (1) Hearing Session = \$750.00

Total amount assessable \$1,050.00

Forum fees assessed against:

1. Claimants, in the amount of \$1,050.00, however, the NASD, Inc. shall offset this amount with the \$750.00 hearing session deposit previously deposited by Claimants; thereby, Claimants owe forum fees in the amount of \$300.00.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

John F. Snyder, Esq.

Public/Chairman

/s/

Mr. Simone Sicola

Public/Panelist

/s/

Ben T. Vernon

Industry/Panelist

Date of Amended Decision: July 23, 1993

NATIONAL ASSOCIATION OF SECURITIES DEALERS
ARBITRATION PROCEEDING #91-01026HESTER H. LOCKLAIR and
DAN LOCKLAIR,

Claimants,

vs.

SMITH BARNEY HARRIS UPHAM
& COMPANY, INC., and JOHN
DAVIDSON,

Respondents.

MOTION OF CLAIMANTS
THAT MONETARY AMOUNT
BE SPECIFIED IN
ARBITRATION AWARD

NOW COME Claimants Hester H. Locklair and Dan Locklair ("Claimants"), by and through their counsel, and hereby move the National Association of Securities Dealers ("NASD") for specification of a monetary amount in the award entered on April 9, 1992, against Respondent John Davidson ("Respondent"). In support thereof, Claimants respectfully show the Court as follows:

1. On April 9, 1992, the Arbitration Panel entered an award against Respondent John Davidson in favor of Claimants in accordance with a Settlement Agreement between the parties. Under the terms of that Settlement Agreement, Respondent Davidson was to pay Claimants the sum of \$20,000 and further agreed to execute a Confession of Judgment.

2. Paragraph 5 of the Settlement Agreement (Exhibit 1) provided by the parties to the Arbitration Panel sets forth as follows:


If necessary for enforcement of this agreement, Davidson authorizes the NASD to enter an award in the amount of settlement.

3. Since April 9, 1992, Respondent has made no payment to the Claimants and has refused to sign a Confession of Judgment.

4. On October 26, 1992, Claimants filed suit in the Superior Court of Forsyth County against Respondent Davidson for enforcement of the NASD award. Respondent answered the Complaint on or about February 8, 1993, defending on the ground that as the award contains no monetary amount, the state court has no jurisdiction to enforce the arbitration award and, accordingly, this matter may only be resolved by the Arbitration Panel.

5. In order that there may be no question of the state court's authority to enforce this Panel's award, Claimants respectfully request that, in accordance with the terms of the Settlement Agreement, the monetary sum of \$20,000 be set forth specifically in the award.

RESPECTFULLY SUBMITTED, this the 1st day of June, 1993.


David C. Smith
Attorney for Claimants Hester H.
Locklair and Dan Locklair

OF COUNSEL:

ALLMAN SPRY HUMPHREYS LEGGETT
& HOWINGTON, P.A.
Post Office Drawer 5129
380 Knollwood Street, Suite 700
Winston-Salem, NC 27113-5129
(919) 722-2300

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this pleading in the above-entitled action upon all other parties to this cause by:

- ☐ Hand-delivering a copy hereof to the attorney for the plaintiff.
- ☒ Depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office Department, properly addressed to the attorney(s).
- ☐ Telecopy.
- ☐ Federal Express Courier Service.

This the 1st day of June, 1993.



Addressee(s):

John Davidson
1600 Charleston Place Lane, #2H
Charlotte, NC 28212

National Association of Securities Dealers
Arbitration Proceeding #91-01026

Hester H. Locklair and
Dan Locklair

Claimants

vs.

Smith Barney Harris Upham
& Company, Inc., and John
Davidson

Respondents.

Now come respondent John Davidson, and hereby moves that the National Association of Securities Dealers ("NASD") deny claimants' motion. In support thereof, respondent respectfully shows the panel as follows:

1) On April 9, 1992, the Arbitration Panel acknowledged a settlement agreement had been reached between the parties and said agreement was read into the official record. It is clear from a review of the record what the responsibilities of the parties were.

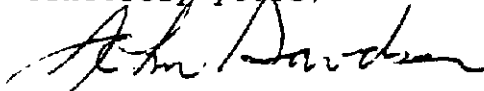
2) Claimants and claimants' attorneys never signed nor produced an agreement corresponding to the agreement as read and clarified into the record. This was in spite of the respondent making payments per the agreement while waiting for compliance by the claimants and their attorneys. In addition, respondent forwarded a signed agreement as read into the record. Claimants' attorneys apparently did not wish to stand on agreement as read into the record and did not feel compelled to complete execution of said agreement.

3) Claimants' statement that "Since April 9, 1992, respondent has not made payment to claimants" is patently false. Further, respondent waited until August 28, 1992, for claimants to sign agreement as read into record, 4 ½ months after the agreement was reached.

4) Claimants have filed suit in the Superior Court of Forsyth County against respondent Davidson using the agreement read into the record for support. This is the same agreement claimants' attorney refused to execute for 4 ½ months. The Hearing is scheduled to begin July 26, 1993, and should resolve this matter once and for all.

5) As a note, the claimants' previous motion for entry of judgement to the National Association of Security Dealers was denied. This agreement was entered into and honored by the respondent John Davidson in good faith. Claimants through their attorneys chose not to sign nor to honor the agreement. Next month on July 26, a full hearing can resolve the matter of the agreement entered into. Respondent John Davidson respectfully requests claimants' motion be denied so this matter may be completely resolved.

Sincerely yours,


John Davidson