

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Roger Marshutz, Trustee for Roger Marshutz
Retirement and Profit Sharing Plan

vs.

NASD #91-01222

Name of Respondents

Smith Barney, Harris Upham & Co., Inc.
Ray Shwarger

REPRESENTATION

For Claimant: Lionel Z. Glancy, Esq., Beverly Hills, California

For Respondents: Scott E. Kresch, Esq., Smith Barney, Harris
Upham & Co., Inc., New York, New York

CASE INFORMATION

Statement of Claim filed: April 17, 1991

Claimant's Submission Agreement signed: April 11, 1991

Joint Statement of Answer filed by Respondents on: June 13, 1991

Respondents' Submission Agreements signed as follows:

Smith Barney, Harris Upham & Co., Inc.: June 12, 1991

Ray Shwarger: June 17, 1991

HEARING INFORMATION

Prehearing Conference(s) Date(s): None

Hearing Date/ Sessions: June 4, 1992 (one session)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant alleged suitability, breach of fiduciary duty and negligence with respect to his investments in Franklin Universal Trust ("Franklin").

Respondents denied Claimant's allegations and denied any liability for Claimant's alleged loss. Respondents asserted that Claimant had sufficient information on Franklin to make an informed investment decision and there was full disclosure concerning Franklin by Respondents. Respondents also asserted that Claimant had ample notice of the decline in value in Franklin and made an investment decision to hold it for two years and then sell. Respondents asserted that they carried out Claimant's investment wishes but cannot guarantee or insure any investment against potential losses caused by uncontrollable market factors.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in an amount not precisely determined;
2. Pre-judgment interest on the compensatory damages, to compensate for the interest and appreciation gains Claimant should have earned on such amounts;
3. Compensation in a reasonable amount for attorney's fees;
4. Compensation for all costs and fees associated with this arbitration, including costs and expenses of expert witnesses;
5. Punitive or exemplary damages in the discretion of the arbitrators; and
6. Such other relief the arbitrators believe to be appropriate under the circumstances.

Respondents requested:

1. Dismissal of the Statement of Claim and that costs be assessed against Claimant.

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 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. Each and every claim of Claimant against Respondents is dismissed.

2. The parties shall each bear their respective costs including attorneys' fees.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$300 hearing session deposit previously deposited by the Claimant.

ARBITRATION PANEL

Public/Industry

' Signatures

Public Arbitrator
Public Arbitrator
Industry Arbitrator

Wayne E. Gallop, Esq.
Wayne E. Gallop, Esq.

Served September 24, 1992

Date of Decision: _____