

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

John W. Gidley)

Case No. 91-01236

Name of Respondent(s))

Smith Barney Harris Upham & Co., Inc.)
Bernard Gonsher)

REPRESENTATION

For Claimant, John W. Gidley ("Gidley"): William P. Doyle, Esq.

For Respondents, Smith Barney Harris Upham & Co., Inc. ("SBHU") and Bernard Gonsher ("Gonsher"): Scott E. Kresch, Esq. of SBHU.

CASE INFORMATION

Statement of Claim filed: April 17, 1991. Claimant's Submission Agreement signed: April 9, 1991.

Respondents' Joint Statement of Answer filed: June 13, 1991. Respondents' Submission Agreements signed by Gonsher on June 18, 1991, and by Scott E. Kresch, Esq. on behalf of SBHU on June 12, 1991.

HEARING INFORMATION

On December 13, 1991, in Fort Lauderdale, Florida, a hearing lasting two (2) sessions was conducted.

CASE SUMMARY

Claimant alleged that Respondents, through Gonsher, made misrepresentations of and omitted to state material facts; recommended and sold to Claimant unsuitable equity securities in new issues underwritten by SBHU; and, guaranteed a 10% return. Claimant further alleged that Respondents' actions constituted unsuitability and fraud; violated various rules of the SEC, NYSE and NASD; and, violated the 1934 Securities Exchange Act, the 1933 Securities Act, and Sections 517.211 and 301, Florida Statutes.

Respondents denied all allegations of wrongdoing and alleged that Claimant's objectives were not conservative but were income and growth; all risks were fully disclosed in the prospectuses; all investments were suitable; and, no guarantees were made.

Respondents alleged the affirmative defenses of failure to timely complain; statute of limitations; failure to state a claim; losses due to Claimant's own decision to hold onto stock; failure to mitigate; and, any losses caused by sole action or negligence of Claimant.

RELIEF REQUESTED

Claimant requested damages in the amount of \$30,000.00, punitive damages, costs and attorney's fees.

Respondents requested dismissal and costs.

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. Respondents, SEHU and Gonsler, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$14,741.20, plus interest at the rate of 7% per annum for 27 months in the amount of \$2,308.47 for a total due to the Claimant of \$17,049.67.
2. Claimant's requests for attorney's fees and punitive damages are denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$800.00 (two sessions x \$400.00). Claimant is hereby assessed \$400.00 for which the NASD shall retain \$380.00 of the monies previously deposited in partial satisfaction thereof. Claimant shall pay the remaining \$20.00 to the National Association of Securities Dealers, Inc. Respondents are hereby assessed \$400.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

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

Concurring Arbitrators' Signatures

/s/
Casey W. Mills, Esq.

Public

/s/
Manuel Frost

Public

/s/
Robert S. Natiss

Industry

Date of Decision: December 30, 1991