

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Eugene Howe

NASD Arbitration
No. 91-03288

Name of Respondents

Smith Barney Harris Upham & Co.
James Peterson
A. G. Edwards, Inc.

REPRESENTATION

For Claimant: John P. Mullen, Esq. - Callister, Duncan & Nebeker - Salt Lake City
Utah

For Respondents: Smith Barney Harris Upham & Co. and James Peterson - Judith C.
Greene, Esq. -

Smith Barney Harris Upham & Co. - New York

CASE INFORMATION

Statement of Claim filed: October 21, 1991

Claimant's Submission Agreement signed on: September 23, 1991

Joint Statement of Answer filed by Respondents, on: January 23, 1992

Respondent Smith Barney Harris Upham & Co.'s Submission Agreement signed on:
January 22, 1992

Respondent James Peterson's Submission Agreement signed on February 5, 1992

Respondent A.G. Edwards & Sons, Inc.'s Submission Agreement signed on January 17,
1992

HEARING INFORMATION

Pre-Hearing Conference: None

Hearing Date/Sessions: August 12, 1992 - Three Sessions

Hearing Location: Salt Lake City, Utah

CASE SUMMARY

Claimant, Eugene Howe (Howe) sought recessionary relief with regard to his purchases of units in Del Taco Restaurant Properties III (Del Taco) and in Krupp Cash Plus-IV Limited Partnership (Krupp). These securities were purchased during 1987 and 1989 respectively, on the recommendation and through the agency of Petersen and Smith Barney. Claimant alleged that these securities were unsuitable for his investment experience, knowledge and situation; and he further alleged that Peterson and Smith Barney misrepresented certain facts concerning these securities in connection with the purchases thereof. Howe also contended that Petersen and Smith Barney breached fiduciary duties owed to him in connection with the recommendation of these securities.

Respondents denied liability under each of these causes of action.

RELIEF REQUESTED

Claimant requested recessionary damages of approximately \$54,939.00, interest and punitive damages of \$100,000.00.

Respondents requested dismissal of the claim in its entirety 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 original(s) 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. Prior to the hearing, a settlement was reached between Howe and A.G. Edwards which resulted in the dismissal of all claims against A.G. Edwards & Co., Inc.
2. Respondent, Smith Barney Harris Upham & Co., Inc., shall rescind the Claimant's purchase of the Del Taco units. Claimant shall surrender all of his right and title to his Del Taco units to Smith Barney, and Smith Barney shall thereupon pay to Claimant, Howe, Twenty Seven Thousand, Two Hundred Sixty Two Dollars and Fifteen Cents (\$27,262.15) as consideration therefor, which amount is inclusive of interest to the date of this decision.
3. Respondent, Smith Barney Harris Upham & Co. Inc. is solely liable and shall pay damages to Claimant, Howe, in connection with his purchase of Krupp, in the amount of Thirteen Thousand, Four Hundred Sixty Three Dollars and Sixty Two Cents (\$13,463.62) which amount is inclusive of interest to the date of this decision.
4. Claimant's claim for punitive damages is denied.
5. The parties shall each bear their respective costs and fees including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1. Respondent, James Peterson, is solely assessed and shall pay to the NASD the sum of \$2,250.00 representing an assessment of fees for three hearing sessions at \$750.00 each.

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

ARBITRATORS

Name

A. Robert Thorup
B.N. Meldrum
George John Potter

Public/Industry

Public Arbitrator
Public Arbitrator
Industry Arbitrator

Concurring Arbitrators' Signatures

A. Robert Thorup

DATE SERVED: 09/21/92

B.N. Meldrum
B.N. Meldrum

George John Potter

Date of Decision: 8-12-92