

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Jerry L. Marstall

91-03392

Name of Respondent(s)

Smith Barney Harris Upham & Co., Inc.
Joseph D. Kringdon

REPRESENTATION

For Claimant: Thomas H. Tucker, Esq. of McGowan, Engel, Tucker, Garrett & Schultz.

For Respondents: David Friedman, Esq. of Smith Barney, Harris Upham & Co., Inc. in New York City.

CASE INFORMATION

Statement of Claim filed: October 28, 1991.

Claimant's Submission Agreement signed on: October 24, 1991.

Joint Statement of Answer filed by Respondents on: January 2, 1992.

Submission Agreement signed by Respondent Smith Barney, Harris Upham & Co., Inc. on January 17, 1992.

Submission Agreement signed by Respondent Joseph Kringdon on: January 20, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: June 11, 1992/two sessions
June 12, 1992/two sessions
July 1, 1992/one session

Hearing Location: Boston, Massachusetts

CASE SUMMARY

Claimant Jerry L. Marstall alleged that Respondents recommended and had him purchase shares of New America High Income Fund, Prospect Street High

Income Portfolio, and Blackstone Target Term Trust -- investments he alleged that were speculative and volatile and in direct contravention of Claimant's investment objectives. Claimant alleged that these investments were unsuitable, that they put significant risks on his principal, and that the risks involved were not disclosed to him. Respondents Smith Barney, Harris Upham & Co., Inc. and Joseph Krington maintained that they never recommended unsuitable securities to the Claimant and never made any intentional misrepresentations. Respondents further maintained that the Claimant was a wealthy and sophisticated investor and that Joseph Krington fully disclosed the fact that the New America High Income Fund and the Prospect Street Fund invested in high yield "junk" bonds.

RELIEF REQUESTED

Claimant requested actual damages of \$115,074.00 from Joseph Krington, \$92,307.00 jointly and severally from Smith Barney, Harris Upham & Co., Inc., interest on his list principal from January 25, 1991 until the date of the award, costs, and attorneys' fees. Respondents requested that the claims of the Claimant 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 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) The claims of the Claimant Jerry Marstall against Respondents Smith Barney, Harris Upham & Co., Inc. and Joseph Krington be and hereby are dismissed in their entirety.

OTHER COSTS

- (1) The parties shall each bear their respective costs, including attorneys' fees.

FORUM FEES

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

- (1) The NASD, Inc. shall retain the \$750.00 hearing session deposit previously deposited by the Claimant. The Claimant is assessed an additional \$1,125.00 in forum fees.
- (2) Respondents Smith Barney, Harris Upham & Co., Inc. and Joseph

Krington are jointly assessed \$1,875.00 in forum fees.

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

Consenting Arbitrators' Signatures

David Salzman
David Salzman, Esq. (chairperson)

Public Arbitrator

Mark Gianno

Public Arbitrator

William Arie

Industry Arbitrator

Dated: July 21, 1992


Erington are jointly assessed \$1,875.00 in forum fees.

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

Concurring Arbitrators' Signatures

David Salzman, Esq. (chairperson)

Public Arbitrator



Mark Giano

Public Arbitrator

William Azis

Industry Arbitrator

Dated: July 21, 1992

Krington are jointly assessed \$1,875.00 in forum fees.

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

Concurring Arbitrators' Signatures

David Salzman, Esq. (chairperson)

Public Arbitrator

Mark Giammo

Public Arbitrator

William J. Aziz
William Aziz

Industry Arbitrator

Dated:

July 21, 1992