

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Estate of Meir S. Mukamal
Barry Mukamal, as co-executor
Stuart Mukamal, as co-executor
Reisa Arnold, as co-executor

91-04042

Name of Respondents

Smith Barney Harris Upham & Co., Inc.
Edmond H. Masri

REPRESENTATION

For Claimants, the Estate of Meir S. Mukamal, Barry Mukamal, Stuart Mukamal ("the Mukamals") and Reisa Arnold ("Arnold"): Barry Mukamal and Stuart Mukamal, Esq.

For Respondents, Smith Barney Harris Upham & Co., Inc. ("Smith Barney") and Edmond H. Masri ("Masri"): Alejandro Schwed of Smith Barney.

CASE INFORMATION

Statement of Claim filed on December 20, 1991. Claimants' Submission Agreement signed on January 17, 1992 by Reisa Arnold on behalf of the Estate, by Barry Mukamal on February 5, 1992 and by Stuart Mukamal on January 21, 1992.

Respondents' joint Statement of Answer filed on March 13, 1992. Respondent, Smith Barney's, Submission Agreement and Corporate Acknowledgment signed by Alejandro Schwed on behalf of Smith Barney on March 12, 1992 and by Masri on March 11, 1992.

HEARING INFORMATION

On December 1, 1992, a pre-hearing conference lasting one session was conducted via telephone conference call with an arbitrator.

On April 27 and 28, 1993, in Fort Lauderdale, Florida, hearings lasting five (5) sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondent, Masri, mishandled the estate portfolio at Smith Barney, particularly with respect to the purchase and continued retention of shares of First executive Life Insurance Co. of California ("First Executive"). Claimants contended that Respondents deceptively induced them to purchase on behalf of the estate, more than \$36,000.00 of First Executive common stock and warrants in order to enhance his own chances of retaining the estate account and his own commissions. Claimants further alleged that it was well known that First Executive had problems, Smith Barney had ceased to recommend the purchase of First Executive stock and that Masri knew of these facts and chose to ignore them in making his recommendations. Claimants alleged that First Executive stock is now virtually worthless.

Respondents denied all allegations of wrongdoing contained in the Statement of Claim and maintained that during his lifetime, Meir Mukamal was a former stockbroker and an extremely knowledgeable and sophisticated investor who pursued an aggressive investment pattern and that his children, the co-executors of his Estate, are all likewise sophisticated and experienced investors and that the investment in First Executive was no riskier than most of the investments purchased in the account since the mid-70's. Respondents denied that Masri continued to recommend the stock after Smith Barney's research analysts had stopped doing so and maintained that Claimants had knowledge of and assumed the risks inherent in trading securities and that Claimants authorized, consented to or acquiesced in the execution of each transaction.

RELIEF REQUESTED

Claimants requested an award of damages in the amount of approximately \$36,000.00 which represents the amount of their investment plus costs and fees.

Respondents requested dismissal of the claim and that reasonable costs be assessed against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

At the commencement of the hearing, Claimants withdrew their Claim of churning.

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, Smith Barney and Masri, are found not liable and therefore all claims against them are hereby dismissed.

OTHER COSTS

The parties shall each bear their own costs and expenses incurred in connection with this proceeding including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees of \$2,300.00 (One (1) pre-hearing conference X \$300.00 plus five (5) hearing sessions X \$400.00).

1. Claimants are hereby assessed forum fees of \$1,150.00 for which the NASD shall retain the \$400.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD, Inc., by Claimants, of \$750.00.
2. Respondents, Smith Barney and Masri are hereby assessed forum fees in the amount of \$1,150.00 payable to the NASD, Inc.
3. The NASD shall retain the non-refundable filing fee of \$120.00 paid by Claimants.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Diane M. Perry, Esq.

Public/Chairperson

/s/

John A. Haley

Industry/Panelist

/s/

Vernon N. Pabalis

Public/Panelist

Date of Decision: June 10, 1993