

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Gary Nehus

vs.

NASD #92-00157

Name of Respondents

Smith Barney Harris Upham & Co., Inc.
John Sheedy

REPRESENTATION

For Claimant: Ann Anderson Esq., Woodland Hills, California

For Respondents: Dov S. Schachter, Esq. of Smith Barney Harris Upham & C
New York, New York

CASE INFORMATION

Statement of Claim filed: January 15, 1992

Claimant's Submission Agreement signed: January 9, 1992

Statement of Answer filed by Respondents: February 28, 1992

Respondents' Submission Agreements signed:

Smith Barney Harris Upham: February 28, 1992

John Sheedy: January 30, 1992

HEARING INFORMATION

Prehearing Conference Date/Sessions: None

Hearing Date/Sessions: September 22, 1992 - three sessions

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant alleged that in May of 1988 he was an unemployed person living on disability income and income from his investments and met respondent Sheedy through the latter's direct mail solicitation. Claimant's investment objectives were conservative, and Sheedy recommended the purchase of 29 bonds of Golden Nugget Financial Corp. When claimant learned of certain misrepresentations regarding this purchase, Sheedy recommended the purchase of a similar bond, Bally's Grand, Inc., which defaulted in a matter of days after the purchase. Respondents knew or should have known of the pending default. Claimant alleged misrepresentation and breach of fiduciary duty in the purchase of the bonds.

Respondents denied all substantive allegations of the Statement of Claim and alleged it was claimant's idea to swap the Golden Nugget mortgage-backed notes for Bally's second mortgage notes; that claimant was a retired certified public accountant from a major accounting firm and had a substantial net worth; that claimant's investment objectives were not conservative and that he never stated he was disabled; that claimant requested the swap of Golden Nugget bonds for Bally's, which respondents expressly advised against doing.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages of \$30,000.00;
2. Interest until rescission if effected;
3. Costs; and
4. Attorneys' fees.

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 National Association of Securities Dealers (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. All claims are dismissed.
2. The parties shall each bear their respective costs including attorneys' fees.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$400.00 hearing session fee previously deposited by the claimant. Forum Fees assessed against claimant are for \$800.00, calculated as follows: three hearing sessions times \$400.00/session, minus \$400.00 already paid as hearing deposit.

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

ARBITRATION PANEL

| <u>Name</u> | <u>Public/Industry</u> |
|------------------------------------|------------------------|
| Concurring Arbitrators' Signatures | |
| Robert G. Sether | Public Arbitrator |
| George M. Wiener | Public Arbitrator |
| Philip Saltz, Esq. | Industry Arbitrator |

Robert G. Sether

George M. Wiener
George M. Wiener

Philip Saltz, Esq.

DATE SERVED: 10/22/92

Date of Decision: _____

OTHER COSTS

None.

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ARBITRATION PANEL

Name

Public/Industry

Concurring Arbitrators' Signatures

Public Arbitrator

Public Arbitrator

Industry Arbitrator


Robert G. Sether

DATE SERVED: 10/22/92

Date of Decision: _____

OTHER COSTS

None.

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APPROVED BY:

ic/Industry

SI

ic Arbitrator

ic Arbitrator

stry Arbitrator

DATE SERVED: 10/22/92


Philip Saltz, Esq.

Date of Decision: _____