



Arbitration

N.A.S.D. AWARD

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, N.Y. 10004  
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimants

Charles E. and Margaret A. Crow  
Deborah Chapman

92-00504

Name of Respondents

Smith Barney Harris Upham & Co., Inc.  
William C. Brown

**REPRESENTATION**

For Claimants Charles E. and Margaret A. Crow and Deborah Chapman ("Claimants"): Leon K. Oxley, of Fraxier & Oxley, L.C.

For Respondents Smith Barney Harris Upham & Co., Inc. ("SBHU") and William C. Brown ("Brown"): Linda R. Alpert of SBHU.

**CASE INFORMATION**

Amended Statement of Claim filed: January 4, 1993.

Statement of Claim filed: February 11, 1991.

Claimant Crows' Submission Agreement signed on: January 31, 1992.

Claimant Chapman's Submission Agreement signed on: December 18, 1992.

Joint Statement of Answer filed by Respondents on: April 27, 1992.

Respondent SBHU's Submission Agreement signed on: April 24, 1992.

Respondent Brown's Submission Agreement signed on: April 22, 1992.

**HEARING INFORMATION**

Hearing Date/Session: November 17, 1992/1 session.

Hearing Location: Columbus, OH.

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### CASE SUMMARY

Claimants alleged Brown solicited their account. Claimants alleged they were not knowledgeable in the area of investment securities and that SBHU held itself and Brown out as experts with regard to investment securities. Claimants alleged they were required to sign a contract but were not encouraged to read it. Claimants alleged they informed Respondents they desired low risk investments and relying upon Respondents' representations they were induced by Brown to invest in General Development Corporation Subordinated Debentures on or about November 24, 1989, which Claimants alleged was not a low risk investment. Claimants alleged Respondents did not inform them of the high risk nature of the investment. Claimants alleged SBHU made a market in the security, as well as commissions taken from Claimants' account. Claimants alleged they received monthly statements and questioned Brown concerning the security as its value dropped; however, Brown said it was still a "good investment." Claimants alleged Respondents misled them by deceiving them into believing the security was consistent with their investment objective and through untrue statements, misleading advice, and omissions concerning the security.

Respondents moved to add Deborah Chapman as a party Claimant in this matter as they alleged she became a co-joint tenant of Claimants' account in April 1988.

Respondents maintained Claimants executed a Customers Account Agreement and a Joint Account agreement, were not pressured into signing these documents and were not discouraged from reading them. Respondents alleged Claimants advised Brown their investment objective was businessman's risk and during the time they maintained their account at SBHU they engaged in a variety of unsolicited and solicited transactions which met this investment objective. Respondents asserted Brown recommended Claimants sell their shares in General Development Corporation common stock and reinvest in General Development Corporation Subordinated Debentures. Respondents alleged Claimants received a confirmation of the purchase and monthly accounts statements and made no objections to any of the trades. Respondents maintained they did not have any definite knowledge as to what the security's future would be and as this was a non-discretionary account Claimants could make their investment decisions.

### RELIEF REQUESTED

Claimants requested: actual damages in the amount of \$25,258.27 plus interest; and costs.

Respondents requested: Deborah Chapman be added as a party Claimant and that all Claimants' claims be dismissed in all respects; and costs.

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### OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD;

Respondents motion to add Deborah Chapman as a party Claimant to the above-captioned matter was agreed to by all parties. On December 18, 1992, Ms. Chapman submitted a Submission Agreement and on January 4, 1993, Claimants filed an Amended Statement of Claim naming Ms. Chapman as a party Claimant. Respondents declined to file an Amended Statement of Answer.

### AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- 1- Respondents Smith Barney Harris Upham & Co., Inc. and William C. Brown are hereby liable, jointly and severally, and shall pay to Claimants Charles E. and Margaret A. Crow and Deborah Chapman the sum of \$15,750.00, upon condition that Claimants tender back to Smith Barney Harris, Upham & Co., Inc. the security that is the subject matter of this Action, namely the General Development Corporation, originally purchased at a price of \$58.00 per bond in the total amount of \$35,000.00;
- 2- All other claims are denied;
- 3- Each party shall bear its own expenses, except that Respondents Smith Barney Harris Upham & Co., Inc. and William C. Brown are hereby liable and shall reimburse Claimants the \$300.00 hearing session deposit previously paid to the NASD.

### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$100.00 non-refundable filing fee and the following Forum Fees are assessed.

**NASD**

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1 session X \$300.00 = \$300.00 minus hearing session deposit of \$300.00 = net \$0.00 due.

Arbitrator's Signature



Thomas J. Bonasora/Public Arbitrator

Date of Decision: January 22, 1993