

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

PUBLIC

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In the Matter of the Arbitration Between

Name of Claimant(s)

Maria Michaels-Johnson  
Frosene Sonderling  
Nicholas Michaels

92-00735

Name of Respondent(s)

Smith Barney Harris Upham & Co., Inc.  
Robert Rubenstein

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**REPRESENTATION**

For Claimants: Seth L. Rosenberg and Meaghan E. Barrett of the law firm of Gallop, Dawson, Clayman and Rosenberg.

For Respondents: Joan Guggenheimer, Esq.

**CASE INFORMATION**

Statement of Claim filed: March 2, 1992.

Claimants' Submission Agreements signed on: February 14, 1992.

Joint Statement of Answer filed by Respondents Smith Barney, Harris, Upham & Co., Inc. and Robert Rubenstein on: September 8, 1992.

Respondent Smith Barney, Harris, Upham & Co., Inc.'s Submission Agreement signed on: May 8, 1992.

The Respondent Robert Rubenstein did not execute a Submission Agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

### **HEARING INFORMATION**

Pre-hearing conference: September 29, 1992

Hearing Dates/Sessions: December 15, 1992 / 2 Sessions  
December 16, 1992 / 2 Sessions

Hearing Location: NASD offices located in Washington, DC.

### **CASE SUMMARY**

Claimants alleged that they purchased 107,500 shares of common stock in General Development Corp. from on or about January 1989 through on or about April, 1990 in reliance on false and misleading information provided to them by Respondents. Claimants further alleged Respondents breached the fiduciary duty owed to them; falsely represented material facts to Claimants upon which they relied in purchasing the stocks and which Respondents knew or negligently failed to determine was false and misleading; Respondents failed to use reasonable care when investigating the validity of the General Development Corp. stock and in its position as principal and employer of Respondent Robert Rubenstein, Respondent Smith Barney, Harris. Upham & Co., Inc. knew or had reason to know Rubenstein communicated false and misleading statements to Claimants.

Respondents maintained they had a reasonable basis for their recommendations of General Development Corp. stock and neither Respondent made any fraudulent representations; Claimants' losses are a result of their own investment decisions and the bankruptcy of General Development Corp. was not a result of any wrongdoing by Respondents and Respondents at all times acted in good faith and did not make any material misstatements or omissions. Respondents further maintained the research report at issue evidences a detailed analyses of assets and earning projections, as well as other factors and contained more than enough data and analysis to support a "buy" recommendation and easily provided a "reasonable basis" for an account executive to recommend the stock to customers as such Claimants, for whom the stock was admittedly suitable.

### **RELIEF REQUESTED**

Claimants requested damages in the sum of \$999,202.00, plus interest, punitive damages and costs and disbursements associated with the arbitration.

Respondents requested the Statement of Claim be dismissed and that all reasonable costs and expenses incurred by Respondents be assessed against Claimants.

**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 Claimants' claims be and hereby are dismissed in all respects.
2. The Claimants' request for punitive damages be hereby is dismissed in all respects.
3. Each party shall 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.

4 sessions + pre-hearing conference = \$4,000.00 + \$300.00 = \$4,300.00  
less Claimant's hearing session deposit (\$1,000.00) = net \$3,300.00 due.

Forum Fees Assessed Against:

The Claimants be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$1,150.00 to represent forum fees and the Respondents Smith Barney, Harris, Upham & Co., Inc., and Robert Rubenstein be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$2,150.00 to represent forum fees.

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

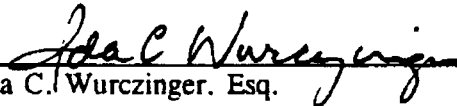
ARBITRATOR SIGNATURES

A handwritten signature in cursive script, reading "Edgar T. Bellinger", written over a horizontal line.

Edgar T. Bellinger, Esq.  
Public Arbitrator

A handwritten signature in cursive script, reading "Marshall Passman", written over a horizontal line.

Marshall Passman  
Public Arbitrator

A handwritten signature in cursive script, reading "Ida C. Wurczinger", written over a horizontal line.

Ida C. Wurczinger, Esq.  
Industry Arbitrator

Date of Decision: March 19, 1993