

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Robert W. Francis

NASD Arbitration
No.92-00963

Name of Respondents

Smith Barney, Harris Upham & Co., Inc.
James R. Peterson

REPRESENTATION

For Claimant: Carroll R. Melton, Marina del Rey, California.

For Respondent Smith Barney: Timothy N. Will, Esq., Keesal Young and Logan,
Long Beach, California.

For Respondent Peterson: James R. Peterson represented himself.

CASE INFORMATION

Statement of Claim filed: March 18, 1992

Claimant's Submission Agreement signed: March 9, 1992

Joint Statement of Answer filed: May 8, 1992

Respondents' Submission Agreement signed:

Smith Barney:	May 7, 1992
James Peterson:	March 27, 1992

HEARING INFORMATION

Pre-Hearing Telephone Conference:

November 10, 1992 - 1 session

Hearing Dates / Sessions:

January 11, 1993 - 2 sessions

January 12, 1993 - 2 sessions

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant alleged unauthorized trading, breach of fiduciary duty, negligence, negligent supervision, unsuitable recommendations, securities fraud and common law fraud with respect to investments in common stocks, mutual funds and real estate limited partnerships.

Respondents denied the allegations, and asserted that all recommendations were made based on Claimant's financial objectives, that monetary losses were the results of market forces rather than Respondents' actions, that Claimant authorized and ratified all transactions, and that Claimant is barred from recovery by the applicable statutes of limitations.

RELIEF REQUESTED

Claimant requested actual damages of \$240,707.59, of which \$159,627.36 is requested for rescission of all limited partnership investments, \$75,753.67 is requested for losses resulting from unauthorized trading, and \$5,326.56 is requested for return of commissions. Claimant also requested punitive damages at least equal to actual damages, interest at 10% per annum, and costs of arbitration.

Respondents requested dismissal of all claims.

OTHER ISSUES CONSIDERED & DECIDED

At hearing on January 11, 1993, the parties stipulated that the hearing would go forward before, and the Award would be rendered by, two arbitrators only.

The parties further 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, the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Smith Barney, Harris Upham & Co. is liable for and shall pay rescissory damages to Claimant, and Claimant is to deliver to Respondent his shares in the limited partnership investments, as follows:

- (a) Del Taco Restaurant Property III - \$40,000.00
- (b) Del Taco Income Property IV - \$3,000.00
- (c) First Capital Income Real Estate IV - \$98,300.00

2. Respondent James R. Peterson is liable for and shall pay to Claimant the sum of \$25,000.00 plus interest at 6% per annum from the date of the award until paid.

3. The claim for punitive damages is dismissed.

4. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the parties are to split all forum fees as follows:


Pre-hearing conference @ \$300/session	=	\$ 300.00
<u>4 sessions @ \$750/session</u>	=	<u>\$3,000.00</u>
Total	=	\$3,300.00
 Claimant's 1/2 share	=	\$1,650.00
<u>Credit for hearing session deposit</u>	=	<u>\$ 750.00</u>
Balance Due	=	\$ 900.00
 Respondents' 1/2 share (joint and several)	=	\$1,650.00

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

ARBITRATORS

Public/Industry
Public Chairperson
Industry Panelist

Signatures


Corinne Whitaker

Served 3/10/93

Date of Decision: _____

3/2/93