

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Daniel J. Coffey

92-01064

Name of Respondents

Smith Barney Harris Upham & Co., Inc.
Joseph D. Duerr

REPRESENTATION

For Claimant: he appeared pro se.

For Respondents: Judith Greene, Esq. of Smith Barney Harris Upham & Co., Inc.

CASE INFORMATION

Statement of Claim filed: March 24, 1992.

Claimant's Submission Agreement signed on: February 26, 1992.

Joint Statement of Answer filed by Respondents on: August 31, 1992.

Respondent, Smith Barney Harris Upham & Co., Inc.'s ("Smith Barney") Submission Agreement signed on: August 31, 1992.

Respondent, Joseph Duerr's Submission Agreement signed on: August 24, 1992.

HEARING INFORMATION

Hearing Date/Sessions: May 4, 1993.

Hearing Location: NASD offices located in New York, New York.

CASE SUMMARY

Claimant alleged that in 1987 Respondent, Joseph Duerr, solicited him to invest in the Krupps Plus IV Limited Partnership ("Krupps"). Claimant also alleged that Mr. Duerr assured him that it was a safe investment and ideal for his child's college education money.

Claimant maintained that over the next several years he contacted Mr. Duerr on several occasions to try to clarify information concerning his investment. Claimant alleged that he did not understand how to interpret the statements he received from Smith Barney and was never clear on how his investment was performing. However, the Claimant also alleged that on the occasions he talked to Mr. Duerr, Mr. Duerr assured him that the investment was doing well and that he had no reason to be concerned.

Claimant further alleged that when he began receiving correspondence from Krupps in 1990 stating that they were entering into negotiations with Berkshire Realty Inc. ("Berkshire") for conversion, that Mr. Duerr advised him that it would never happen and to just sit tight. However, the Claimant maintained that in June 1991 the conversion between Krupps and Berkshire became official causing his investment to plummet. The Claimant also alleged that it was during this period that he learned that Krupps was a Real Estate Limited Partnership.

In addition, the Claimant alleged that the Real Estate Limited Partnership was an inappropriate investment given his position and that he never received a prospectus concerning the investment.

Respondents maintained that Claimant Daniel Coffey opened an account at Smith Barney in August of 1986 and instructed his Account Executive Joseph Duerr to transfer in both his IRA Account and individual custodial accounts for his son and daughter from another brokerage firm.

Respondents further maintained that the purchases referred to in the complaint were made by Claimant as custodian for the Accounts of his son and daughter after Claimant received a prospectus describing in detail the business, including the risks of the non-trading limited partnership.

In addition, Respondents maintained that the investments were authorized and on which the cash distributions of more than \$18,311.00 had been received. Furthermore, the Respondents maintained that Mr. Coffey knew that an investment in this limited partnership was non-trading because the prospectus describes that fact on the cover and that Mr. Coffey decided to purchase through Smith Barney the Krupp limited partnership which met the investment goals he established for the accounts of his children.

Respondents also maintained that Mr. Coffey received confirmations of these purchases and Smith Barney monthly statements showing these purchases, and that the Accounts received income from these programs was reinvested in additional units in accordance with Claimants instructions.

In addition, Respondents maintained that Claimant at all times controlled these accounts and that

Claimant never complained to either Mr. Duerr or to anyone else at Smith Barney about the limited partnership investments until after the exchange of the units into a real estate investment trust which was listed on the New York Stock Exchange; that at all times Mr. Duerr and Smith Barney acted in the best interests of Claimant; and that the securities recommended to him were in accordance with his stated investment objectives for the accounts he established.

RELIEF REQUESTED

Claimant requested actual damages in the amount of \$46,600.00 plus nominal or fair interest to be determined by the arbitrator. As part of the settlement the Claimant will liquidate 3,120 of Berkshire that he is currently holding.

Respondents requested that the Statement of Claim be dismissed in its entirety and that costs be assessed against Claimant.

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 NASD.

The panel agreed at the hearing to go forward with two arbitrators.

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 Respondent Smith Barney Harris Upham & Co., Inc. shall pay to the Claimant the amount of \$25,191.00. This amount is inclusive of interest and leaves Claimant with full responsibility for shares he still holds in Berkshire Realty.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

\$120.00	Non-refundable filing fee.
\$800.00	(2 sessions x \$400.00)

Forum fees Assessed Against:

1. Total forum fees in the amount of \$920.00 are hereby assessed against Smith Barney.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

Date of Decision: _____