

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Perenich, Carroll, Perenich, Avril & Caulfield,
P.A.

92-01209

Name of Respondents

Smith Barney Harris Upham & Co., Inc.
Edward J. Warticki

REPRESENTATION

For Claimant, Perenich, Carroll, Perenich, Avril & Caulfield, P.A. ("Perenich"): Henry Sanchez, Jr., Esq. of Page and Bacek.

For Respondents, Smith Barney Harris Upham & Co., Inc. ("Smith Barney") and Edward J. Warticki ("Warticki"): Larry H. Irom, Esq. of Smith Barney.

CASE INFORMATION

Statement of Claim filed on: 4/7/92.

Claimant's Submission Agreement signed on: 5/7/92 by Guy N. Perenich, Trustee on behalf of Perenich.

A joint Statement of Answer was filed by Respondents on: 7/8/92.

Respondent, Smith Barney's, Submission Agreement and Corporate Acknowledgment was signed on: 7/6/92 by Larry H. Irom on behalf of the firm.

Respondent, Warticki's, Submission Agreement was signed on: 7/6/92.

HEARING INFORMATION

On January 22, 1993 a Pre-Hearing Conference lasting one session was conducted via telephone with an arbitrator.

On February 9, 10, 11 and April 22, 1993 in Tampa Florida, hearings lasting eight (8) sessions were conducted.

CASE SUMMARY

Claimant alleged that it has been damaged as a result of Respondent, Warticki's fraudulent misrepresentations and omissions, breach of fiduciary duty and breach of contract in connection with Claimant's employee profit sharing trust account at Smith Barney. Claimant alleged that this account was for the benefit of the Claimant's employees and subject to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"). Claimant asserted that Respondents are guilty of fraudulent misrepresentations and omissions which constitute violation of Chapter 517 of the Florida Securities Investor Protection Act, breach of contract and failure to properly supervise and that the securities at issue: MFS Intermediate Income Trust; MFS Multimarket Income Trust; Putnam Premier Income Trust; Americus Trust for GTE SCORES; Americus Trust for DOW SCORES and MFS Charter Income Trust, were risky and unsuitable for Claimant's account and that an overconcentration of these securities caused losses to Claimant. Claimant further asserted that Respondent, Smith Barney, is liable to it on the basis of respondeat superior liability, control person liability, common law agency principles and for failing to properly supervise Warticki and that Smith Barney's conduct constitutes a violation of ERISA.

Respondents denied all allegations of wrongdoing contained in the Statement of Claim and stated that Claimant is a law firm that made the decision to invest in common stocks, close-end bond funds, federal agency notes, zero coupon bonds and scores all of which were explained to members of the firm by Warticki and that Claimant made the ultimate decision to invest. Respondents maintained that Claimants Claim is an attempt at shifting the responsibility for their investment decisions from their own shoulders to the pockets of the Respondents.

RELIEF REQUESTED

Claimant requested compensatory damages of approximately \$31,637.25, interest, punitive damages, costs and attorneys fees. In addition, Claimant requested treble damages under the Federal RICO Act ("RICO"), and return of all commissions paid to Respondents.

Respondents requested that the Statement of Claim be dismissed in its entirety and that all reasonable costs be asserted 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.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Smith Barney and Warticki, are found liable, jointly and severally, and shall pay to Claimant the amount of \$24,205.93, including interest.

2. Claimant's requests for punitive damages, treble damages under RICO and attorneys fees are denied.
3. All other claims are denied.

OTHER COSTS

The parties shall each bear their own costs and expenses incurred in connection with this proceeding.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$6,300.00 (One Pre-Hearing Conference X \$300.00 plus eight (8) hearing sessions X \$750.00).

1. Claimant is hereby assessed forum fees in the amount of \$3,150.00 for which the NASD shall retain the \$750.00 previously deposited by Claimant in partial settlement thereof leaving a balance due to the NASD by Claimant of \$2,400.00
2. Respondents, Smith Barney and Warticki, are hereby assessed \$3,150.00, jointly and severally, payable to the NASD.
3. The NASD shall retain the non-refundable filing fee of \$200.00 paid by Claimant.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

George S. Coit, Jr., Esq.

Public/Chairman

/s/

L. Matthew Byrd, Esq.

Industry/Panelist

/s/

Thomas E. Greef

Public/Panelist

Date of Award: July 9, 1993