

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Jack R. Stroot

92-01558

Name of Respondents

Smith Barney, Harris Upham & Co., Inc.:
Warren W. Langford

REPRESENTATION

For Claimant: Jack R. Stroot was represented by Firmin C. Puricelli, Esq. and W. Woody Schlosser, Esq. of Puricelli & Schlosser, located in St. Louis, Missouri.

For Respondents: Smith Barney, Harris Upham and Co., Inc. was represented by Alejandro Schwed, Esq., of Smith Barney, Harris Upham & Co., Inc., New York, New York.

Warren W. Langford was represented by H. Todd Iveson, Esq. and Martin M. Green, Esq. of Green, Hoffman & Dankenbring, located in St. Louis (Clayton), Missouri.

CASE INFORMATION

Statement of Claim filed: May 7, 1992.

Claimant's Submission Agreement signed on: May 6, 1992.

Statement of Answer filed by Respondent Smith Barney, Harris Upham & Co., Inc. on: July 8, 1992.

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

7, 1992 by Alejandro Schwed, Vice President, Smith Barney, Harris Upham & Co., Inc.

Statement of Answer filed by Respondent Warren W. Langford on: July 2, 1992.
Respondent Warren W. Langford's Submission Agreement signed on: June 23, 1992.

Withdrawal of Claim against Smith Barney, Harris Upham & Co., Inc. filed on: February 9, 1993.

HEARING INFORMATION

Pre-Hearing Conference:	February 9, 1993 before one arbitrator.
Hearing Date/Sessions:	February 16, 1993 for Three (3) sessions.
Hearing Location:	St. Louis, Missouri.

CASE SUMMARY

Claimant Jack R. Stroot ("Stroot") alleged that Respondent Warren W. Langford ("Langford"), while employed by or acting as agent for Smith Barney, Harris Upham & Co., Inc. ("Smith Barney"), misrepresented several investments to Stroot, resulting in the investment of Stroot's assets and life savings into unsuitable securities in high yield "junk bond" Funds. Stroot specifically alleged that:

1. In 1985, Stroot opened an account at Drexel Burnham Lambert through Langford, who was employed by Drexel at the time. Stroot advised Langford that his primary investment objective was safety of principal because the funds were his life savings needed for retirement and he needed safe investments that provided a monthly income;
2. Relying completely on Langford's advice, Stroot purchased investments in a series of highly unsuitable investments in funds which invested heavily in "junk Bonds". Stroot was unfamiliar with investments and relied on Langford, who disclosed nothing about the speculative nature of the funds and did not disclose any of the attendant risks of these investments;
3. In May of 1989, Stroot's accounts were transferred to Smith Barney,

including his position in The New America High Income Fund. Over the next several months, the price of the Fund began a steady drop;

4. When Stroot inquired about the drop, Langford advised him not to worry. Further inquiries brought different information and ultimately, Langford advised Stroot to sell the New America and purchase GM zero coupon bonds, interests in a publishing house and/or interest in an oil deal;

5. Stroot sold the New America, but did not follow Langford's recommendations and transferred his account out of Smith Barney.

Based upon the above allegations, Stroot claimed breach of contract; breach of the NASD Rules of Fair Practice; breach of fiduciary duty; and common law misrepresentation and omission. Stroot's claims against Smith Barney were based upon the breach of duties and misrepresentations made by Langford regarding the New America High Income Fund.

Respondent Smith Barney denied the material allegations of the Statement of Claim, alleging that:

1. The America Fund was purchased prior to Stroot opening his accounts at Smith Barney and nothing indicated there was any problem with the investment when it transferred in to Smith Barney;
2. The investment was consistent with Stroot's objective of high current income, income. Monthly statements were sent to Stroot which showed the month by month decline in value of the shares, yet he never placed a sell order;
3. Most courts have ruled that a broker is under no obligation to provide information about a product after the purchase is made;
4. There was no wrongdoing by Smith Barney in the handling of this account and it has probably been included in this claim because of Stroot's need for a "deep pocket".

Respondent Langford denied the material allegations of the Statement of Claim, alleging that:

1. Stroot maintained two accounts with Langford which contained approximately \$170,000.00 and never told Langford, who believed this was a portion of Stroot's net worth, that he had no other assets;
2. The funds in Stroot's IRA account were invested -- on Langford's

recommendation -- very conservatively and did extremely well, but that was never mentioned in the Claim. Looking at the whole picture, Langford supplied Stroot with a balanced portfolio focusing on low risk investments in the retirement account and higher risk items in the trading account:

3. All investments in the high-yield bond funds were discussed with Stroot, who always made the final decision regarding the purchases in his account:

4. Langford's recommendation of New America was made in good faith and Langford had no motivation to keep Stroot in the fund after its value declined. In addition, Langford denied making several of the statements about the fund he was alleged to have made.

Langford asserted several affirmative defenses, including:

1. Stroot was aware of the risks inherent in trading in certain securities and the losses sustained resulted from these risks;

2. Stroot is barred from recovery because of the doctrines of estoppel, waiver, ratification and because the claim was not filed within the time permitted by the applicable statutes of limitations;

3. Stroot failed to exercise due diligence in the handling and monitoring of his accounts; and

4. Claims for punitive damages are barred by applicable law.

RELIEF REQUESTED

Claimant Stroot requested that the arbitrators enter an award against the Respondent Langford in an amount in excess of \$50,000.00, plus interests and costs. In addition, Stroot requested that the arbitrators enter an award against Respondent Smith Barney in the amount of at least \$41,640.00 plus interest and costs.

Respondent Smith Barney requested that in addition to the dismissal of all claims, all costs incurred in defense of the claim be assessed against Stroot.

Respondent Langford requested that the claim be dismissed and that Stroot be ordered to pay all

Langford's expenses in this action, including reasonable attorneys' fees.

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.

On February 9, 1993, Stroot filed a Withdrawal of Claim which dismissed with prejudice the claim against Respondent Smith Barney. Therefore, the arbitration proceeded against Respondent Langford.

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 Statement of Claim is hereby dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

OTHER COSTS

Pursuant to Section 30(b) of the NASD Code of Arbitration Procedure, the NASD shall refund the \$500.00 adjournment fee previously deposited by Respondent Smith Barney, Harris Upham & Co., Inc.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) Pre-Hearing Conference with one arbitrator x \$300.00 = \$300.00; Three (3) hearing sessions x \$500.00 per session = \$1,500.00; Total Forum Fees = \$1,800.00.

The National Association of Securities Dealers, Inc. shall retain the \$150.00 claim filing fee and refund the \$500.00 hearing session deposit previously deposited by the Claimant, Jack R. Stroot. Respondent Warren W. Langford is liable for and shall pay to Claimant Jack R. Stroot the sum of \$150.00 as reimbursement of the claim filing fee. In addition, Respondent Warren W. Langford is liable for and shall pay to the NASD forum fees in the sum of \$1,800.00.

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

Concurring Arbitrators' Signatures

Name

Date

Thomas A. Cipolla, Esq.

June 2, 1993

Thomas A. Cipolla, Esq.

Public Arbitrator

Chairperson

Carl O. Trautmann

June 22, 1993

Carl O. Trautmann

Public Arbitrator

Pamela Cavness

June 1, 1993

Pamela Cavness

Industry Arbitrator

Date of Service on Parties: 6-25-93