

N.A.S.D. AWARD

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Gary S. Sklar

92-01675

Name of Respondent(s)

Smith Barney Harris Upham & Co., Inc.
Theodore A. Schwab

REPRESENTATION

For Claimant Gary S. Sklar: Walter D'Ull.

For Respondents Smith Barney, Harris Upham & Co., Inc. and Theodore A. Schwab: Hugh M. McGovern, Esq.

CASE INFORMATION

Statement of Claim filed: May 15, 1992.

Claimant Garry S. Sklar's Submission Agreement signed on: March 9, 1993.

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

Joint Statement of Answer filed by Respondents Smith Barney, Harris. Upham & Co., Inc. and Theodore A. Schwab on: July 27, 1992.

Respondent Smith Barney, Harris, Upham & Co., Inc.'s Submission Agreement signed on: July 24, 1992.

HEARING INFORMATION

Hearing Date/Sessions: March 22, 1993 / Two Sessions
Hearing Location: NASD offices located in New York, New York.

CASE SUMMARY

Claimant alleged that Respondents induced him to make investment decisions through misrepresentations of expertise, omission of facts and baseless oral promises of quick returns and other misrepresentations. Claimant further alleged Respondents breached their fiduciary duty to the Claimant; Respondent Smith Barney, Harris, Upham & Co., Inc. failed to properly supervise Respondent Schwab and Respondents recommended unsuitable investments to the Claimant and placed his funds in unsuitable investments.

Respondents maintained there was no wrongdoing on the part of the Respondents and this is simply a case of a disgruntled investor who lost money on two stocks, improperly attempting to abdicate responsibility for his own investment decisions and there is no basis to Claimant's claims as he is a wealthy, experienced investor who traded aggressive growth stocks and was fully aware of the risks associated with such investments. Respondents further maintained any losses allegedly incurred by the Claimant were caused by market forces beyond Respondents' control.

RELIEF REQUESTED

Claimant requested damages of \$25,326.00 plus interest at 9% per annum, attorneys' fees and costs of the proceedings.

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

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by the Claimant be and hereby are dismissed in all respects.
2. Each party shall bear its own costs including attorneys' fees.

FORUM FEES

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

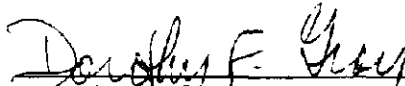
2 sessions x \$300.00 = \$600.00 less Claimant's hearing session deposit
of \$300.00 = net \$300.00 due.

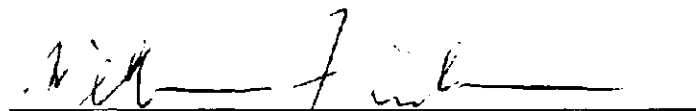
Forum Fees Assessed Against:

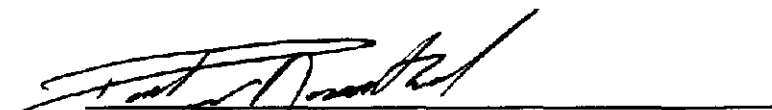
The Respondents be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$300.00 to represent forum fees.

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

ARBITRATION PANEL


Dorothy F. Gray, Esq.
Public Arbitrator


William Friedman, Esq.
Public Arbitrator


Paul M. Rosenthal, Esq.
Industry Arbitrator

Decision Dated: April 12, 1993

STATE OF: NY

SS:

COUNTY OF: NY

On this 5th day of March, 1993, before me personally appeared **Dorothy F. Gray, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Dorothy F. Gray

STATE OF: New York

SS:

COUNTY OF: NEW YORK

On this 7th day of April, 1993, before me personally appeared **William Friedman, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Robert V. Re

ROBERT V. RE
Notary Public, State of New York
No. 41-488081
Qualified in Queens County
Commission Expires 6/30/94

STATE OF: NY

SS:

COUNTY OF: NY

On this 5th day of April, 1993, before me personally appeared **Paul M. Rosenthal, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

ELAINE BENINATI
Notary Public, State of New York
No. 43-488002
Qualified in Richmond County
Commission Expires March 23, 1995

Elaine Beninati