

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Ronald L. Scott

and

92-01815

Name of Respondents

Smith Barney Harris Upham & Co., Inc. and
John Hardman Robinson

REPRESENTATION OF PARTIES

Claimant was represented by Steve A. Miller, Esq., Denver, Colorado.

Respondent Smith Barney Harris Upham & Co., Inc. was represented by Alejandro Schwed, Esq. of Smith Barney Harris Upham & Co., Inc., New York, New York.

Respondent John Hardman Robinson was represented by John S. Lutz, Esq. of Kelly, Stansfield & O'Donnell, Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about June 1, 1992. Submission Agreement of Claimant Ronald L. Scott was signed on April 2, 1992.

Statement of Answer of Respondent Smith Barney Harris Upham & Co., Inc., was filed on or about July 22, 1992. Submission Agreement of Respondent Smith Barney Harris Upham & Co., Inc. was signed on July 21, 1992 by Alejandro Schwed.

Statement of Answer of Respondent John Hardman Robinson was filed on or about July 21, 1992.

HEARING INFORMATION

The hearing was held on Wednesday, March 3, 1993 for two (2) sessions and Thursday, March 4, 1993 for two (2) sessions in Denver, Colorado for a total of four (4) sessions.

CASE SUMMARY

Claimant alleged that Respondent John Hardman Robinson ("Robinson") made recommendations to purchase two mutual funds for his IRA account which were unsuitable for his investment Objectives. Claimant specifically alleged that the investments in Prospect Street High Income Portfolio, Inc. and Ostrander High Income Reserve Fund were not suitable, and that Robinson failed to disclose the risk of these investments. Claimant further alleged that Robinson breached his fiduciary duty to him and that Smith Barney Harris Upham & Co., Inc. ("Smith Barney") was liable as his employer.

Respondent Smith Barney denied the allegations set forth in the Statement of Claim. Smith Barney specifically stated that the transactions took place in the Claimant's account when the account was at Drexel Burnham and that there was no "wrongdoing" by it. Smith Barney also asserted affirmative defenses including but not limited to the following: the Statement of Claim fails to state a claim on which relief can be granted; authorization and/or ratification; and the doctrines of laches, waiver and estoppel.

Respondent Robinson generally denied the allegations set forth in the Statement of Claim. He also stated that he talked regularly with the Claimant and that the Claimant was aware of the risk in the investments complained of. Robinson further stated that the appropriate disclosures were made to the Claimant and that prospectuses were provided for each of these investments. Affirmative defenses including but not limited to the following were also asserted by Robinson: the Statement of Claim fails to state a claim on which relief can be granted; authorization; assumption of the risk; ratification, failure to mitigate and laches; contributory negligence; and the claims are barred by the applicable statutes of limitation.

RELIEF REQUESTED

Claimant requested an award of the loss in the value of his IRA from the time of its transfer from Drexel Burnham to Smith Barney until its transfer away from Smith Barney, approximately \$75,000.00; loss of profits that should have been reasonably realized in his IRA if the IRA had been invested in suitable securities; interest; attorney's fees; and punitive damages.

Respondent Smith Barney Harris Upham & Co., Inc. requested that the Statement of Claim be dismissed and that all costs incurred in defending this matter be assessed against the Claimant.

Respondent John Hardman Robinson requested that all claims against him be dismissed with prejudice and that he be awarded his costs and attorney's fees in connection with this matter.

OTHER ISSUES CONSIDERED & DECIDED

Respondent John Hardman Robinson did not file with the N.A.S.D. a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the N.A.S.D. Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with the N.A.S.D.

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. Respondent John Hardman Robinson shall be and hereby is liable for and shall pay to the Claimant Ronald L. Scott the sum of \$53,000.00 (fifty three thousand dollars) as compensatory damages.
2. Respondent John Hardman Robinson shall be and hereby is liable for and shall pay to the Claimant Ronald L. Scott the sum of \$14,000.00 (fourteen thousand dollars) as interest.
3. Interest on the above stated sums shall accrue at the rate of 8% per annum from the date of this award until paid.
4. All claims asserted against Respondent Smith Barney Harris Upham & Co., Inc. shall be and hereby are dismissed with prejudice.
5. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

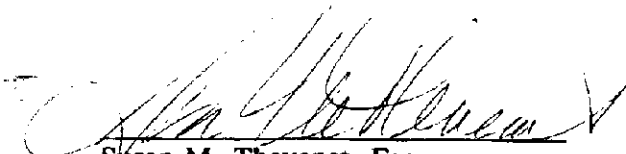
Pursuant to Section 43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$150.00 and shall retain as forum fees the hearing session deposit in the amount of \$500.00 previously deposited with the N.A.S.D. by the Claimant. Claimant shall pay to the N.A.S.D. the additional sum of \$500.00 and Respondent John Hardman Robinson shall pay to the N.A.S.D. the sum of \$1,000.00 as additional forum fees.

N.A.S.D. Arbitration No. 92-01815

Award

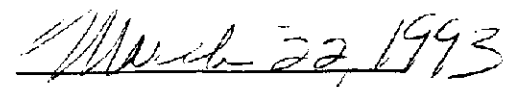
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Forum fees are calculated at the rate of \$500.00 per hearing session and \$300.00 for each prehearing conference, if any.



Susan M. Thevenet, Esq.
Public Arbitrator, Presiding Chair

Dated:



Edward O'Keefe, Esq.
Public Arbitrator

Gerald W. Wischmeyer, Esq.
Industry Arbitrator

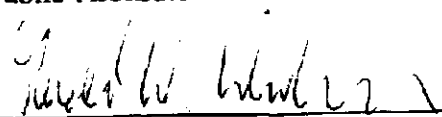
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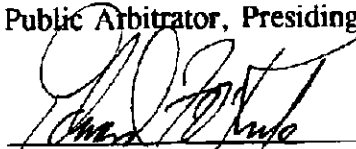
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Susan M. Thevenet, Esq.
Public Arbitrator, Presiding Chair


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Industry Arbitrator

March 16, 1993