

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Philip H. Puder, Trustee
Philip H. Puder Revocable Trust

vs.

92-01882

Name of Respondent(s)

Smith Barney Harris Upham & Co., Inc.
Charles R. Carvana

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 04, 1992. Claimant Philip H. Puder who appeared pro se, alleged that Respondent Smith Barney through its registered representative, Respondent Charles Carvana, misled him into purchasing five hundred shares of WTD Industries, Inc. which was not a suitable investment, considering his clear preference for conservative investments.

Respondents Smith Barney Harris Upham & Co., Inc. and Charles Carvana, through their in-house counsel Linda R. Alpert, Esq., maintained that the stock was suitable, given Claimant's stated investment objectives and financial status, and he was made aware of the investments speculative nature. The Respondents further maintained that the Claimant failed to mitigate his losses by holding the stock when he could have sold it, and therefore his claim should be denied.

RELIEF REQUESTED

Claimant Philip A. Puder requested \$5000.00 in actual damages.

Respondents Smith Barney Harris Upham & Co., Inc. and Charles Carvana requested the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Joseph L. Bernstein, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 04, 1992 and by the Respondent Smith Barney Harris Upham & Co., Inc. on July 22, 1992 and by Respondent Charles Carvana on July 14, 1992.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimant Philip H. Puder, Trustee against Respondents Smith Barney Harris Upham & Co., Inc. and Charles Carvana are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD. Respondent Smith Barney Harris Upham & Co., Inc. is liable and shall pay \$62.50 to the Claimant as reimbursement of one-half of the filing fee.

AFFIRMATION

I, JOSEPH BERNSTEIN, Esq. do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: January 18, 1993