

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Morris and Norma Pollekoff

92-02385

Name of Respondents

Smith Barney Harris Upham & Co., Inc. (n.k.a. Smith
Barney Shearson, Inc.)
Robert Rubenstein

REPRESENTATION

For Claimants Morris and Norma Pollekoff ("Claimants"): Sheila Footer, Esq.
of the law firm of Silver, Friedman & Taff.

For Respondents Smith Barney Harris Upham & Co., Inc. ("Smith Barney")
and Robert Rubenstein ("Rubenstein"): Paul Giappone, Associate General
Counsel of Smith Barney.

CASE INFORMATION

Statement of Claim filed: July 17, 1992

Claimants' Submission Agreement signed on: July 13, 1992

Joint Statement of Answer filed by Respondents Smith Barney and
Rubenstein (collectively referred to as "Respondents") on: September 24, 1992
Smith Barney's Submission Agreement signed on: September 23, 1992
Rubenstein's Submission Agreement signed on: September 24, 1992.

HEARING INFORMATION

Hearing Dates/Sessions:

October 7, 1993 - two sessions

October 8, 1993 - two sessions

November 11, 1993 - two sessions

Hearing Location: NASD Executive Offices - Washington. D.C.

CASE SUMMARY

Claimants alleged that their stockbroker Rubenstein had control over their accounts and that Claimants trusted Rubenstein to make trading recommendations that met their stated investment objective. Claimants alleged that Rubenstein was acting within the scope of his employment with Smith Barney. Claimants alleged that they told Rubenstein that they were seeking a balanced port folio with stocks of high quality which was reasonable given their age and their investment objectives. Claimants alleged that Rubenstein altered the character of their accounts from conservative to speculative. Claimants alleged that Rubenstein parked stocks in Mr. Pollekoff's account. Claimants alleged that Rubenstein recommended speculative and unsuitable investments. Claimants alleged that Rubenstein held himself out to be an expert and privy to information not available to others. Claimants alleged that Rubenstein made false statements of material facts in promising guaranteed returns on investments. Claimants alleged that Smith Barney knew or should have known its agent Rubenstein was parking stocks, recommending unsuitable investments and promising false rates of return. Claimants alleged that Smith Barney failed to supervise its agent or the Claimants' accounts. Claimants alleged that Rubenstein and Smith Barney breached their fiduciary duties that they owed to Claimants.

Respondents categorically denied all allegations of wrongdoing and specifically maintained that Claimants are wealthy investors who are attempting to shift the burden of their investment risk to Smith Barney and Rubenstein. Respondents maintained that Claimants misrepresent the nature of their investment objectives, their own control over their accounts, the make up their port folio and the extent of their losses. Respondents maintained that all trades were authorized and approved and were suitable. Respondents maintained that Claimants are using the benefit of twenty/twenty hindsight to conclude that the investments were unsuitable. Respondents maintained that Claimants were aware of the risks inherent in their investments. Respondents maintained that neither Rubenstein or Smith Barney guaranteed performance or rates of return. Respondents maintained that Claimants allegation about parking are on their face nonsensical. Respondents maintained that although most trades were recommended by Rubenstein, the Claimants always made the final investment decisions and were in control over their accounts. Respondents maintained that Rubenstein and Claimants accounts' were properly supervised.

RELIEF REQUESTED

Claimants requested rescission of the purchases of all unsuitable investments reduced by the withdrawals and increased by the amount of the income they would have earned if their investment objective of safety had been followed. Claimants also requested exemplary and under the Federal "Racketeer Influenced and Corrupt Organization" ("RICO") Act, treble damages and attorneys fees.

Respondents requested that Claimants' claims be dismissed in their entirety and that Respondents be awarded all costs and fees incurred in defending this claim.

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, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents are jointly and severally liable to Claimant Morris Pollekoff and shall pay to Morris Pollekoff the sum of **EIGHTY-ONE THOUSAND AND 00/100 (\$81,000)**; plus simple interest at the rate of seven per cent (7%) per annum from May 1, 1989 to the date the award is paid.
2. That Respondents are jointly and severally liable to Claimant Norma Pollekoff and shall pay to Norma Pollekoff the sum of **SIXTY THOUSAND AND 00/100 DOLLARS (\$60,000)**; plus simple interest at the rate of seven per cent (7%) per annum from May 1, 1989 to the date the award is paid.
3. Claimants request for exemplary damages is denied in its entirety
4. Claimants request for treble damages and attorney's fees under RICO is denied in its entirety.

5. That each party shall bear their own costs and attorney's fees, except as specifically provided for herein.

FORUM FEES

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

6 sessions x \$1,000 = \$6,000

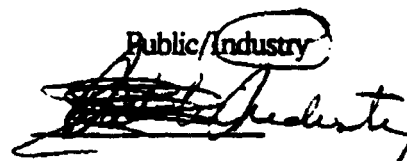
Forum Fees Assessed Against: 50% of the forum fees are assessed against Claimants; 25% of the forum fees are assessed against Smith Barney; and 25% of the forum fees are assessed against Rubenstein. Therefore, Claimants are assessed forum fees in the amount of \$3,000, but they are entitled to offset this amount with their hearing session deposit of \$1,000 paid previously so that the amount due from the Claimants as forum fees is \$2,000. Smith Barney shall pay forum fees in the amount of \$1,500. Rubenstein shall pay forum fees in the amount of \$1,500.

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

Concurring Arbitrator's Signature
Name


Michael P. Gwinn

Public/Industry



NASD Date of Decision: November 30, 1993

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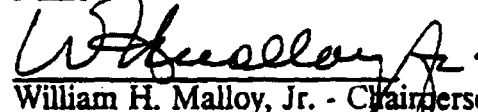
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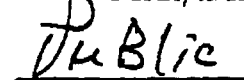
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Concurring Arbitrator's Signature

Name


William H. Malloy, Jr. - Chairperson

Public/Industry



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Concurring Arbitrator's Signature
Name

Public/Industry


Jerry M. Hamovir

NASD Date of Decision: November 30, 1993