

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

J.K. Macdonald
Eloise R. Macdonald

92-02549

Name of Respondent(s)

Smith Barney Harris Upham & Co., Inc.

REPRESENTATION

For Claimants J.K. MacDonald and Eloise R. MacDonald: Edward J. Dovin,
Esq. of the law firm of Page & Bacek.

For Respondent Smith Barney Harris Upham & Co., Inc. ("Smith Barney"):
David S. Friedman, Esq.

CASE INFORMATION

Statement of Claim filed: July 31, 1992.

Claimants' Submission Agreement signed on: July 10, 1992.

Statement of Answer filed by Respondent Smith Barney Harris Upham & Co.,
Inc. on: November 16, 1992.

Respondent Smith Barney Harris Upham & Co., Inc.'s Submission Agreement
signed on: December 7, 1992.

HEARING INFORMATION

Pre-Hearing Conference: January 6, 1994

Hearing Dates/Sessions: January 19, 1994 / Two Sessions
 January 20, 1994 / Three Sessions
 January 21, 1994 / Two Sessions

Hearing Location: NASD offices located in Atlanta, GA.

CASE SUMMARY

Claimant alleged in late 1988, Smith Barney undertook a pattern and practice of fraudulently inducing the Claimants into purchasing over \$252,130.27 of General Development Corporation ("GDC") securities and as a result of Smith Barney's malfeasance, Claimants have suffered aggregate losses in their accounts in excess of \$220,156.36. Claimants further alleged Smith Barney's malfeasance arose, in part, from its false representation to the Claimants that GDC securities were an excellent investment opportunity, and should be accumulated for long-term growth and possible rapid short-term appreciation and at the time Smith Barney made these representations, it knew, or should have known, that GDC was experiencing serious legal and financial difficulties which would adversely impact the future prospects of its securities as allegations of GDC's inflated property appraisals and overzealous sales techniques had surfaced at the time Smith Barney recommended GDC securities to the Claimants and Smith Barney failed to notify the Claimants of these material facts, and as a result breached its duties to the Claimants. Claimants further alleged Smith Barney continued to recommend that Mr. MacDonald purchase GDC securities weeks after GDC's CEO and President pled guilty to fraud and racketeering charges in mid-March 1990 and Smith Barney attempted to justify its recommendation by explaining that such a purchase would make up for the earlier losses Mr. MacDonald had sustained as a result of his purchase of GDC common stock. Claimants further alleged GDC filed for protection under Chapter 11 of the U.S. Bankruptcy Code in April of 1990, thus bringing a certain end to any hope the Claimants had of realizing any return on their GDC investments.

Respondent maintained Claimant J.K. MacDonald is a self-made multi-millionaire and an extremely shrewd, savvy and sophisticated investor and at the time that he purchased General Development Corporation securities Smith Barney Harris Upham & Co., Inc. and its former broker had a reasonable basis for believing that the stocks and bonds of General Development Corp. were suitable for him. Respondent further maintained that they did not make any misrepresentations about General Development Corp. to Claimant J.K. MacDonald and the broker carefully reviewed and relied on the research reports prepared by the research analyst in Smith Barney's highly-regarded research department and analysis at research departments at other major brokerage houses had a "buy"

recommendation on General Development Corp. and the reports were sent to J.K. MacDonald who read them, understood the facts and forecasts contained therein and discussed the reports with the broker. Respondent further maintained with respect to the purchase of General Development Corp. bonds by Claimant Eloise MacDonald, the idea to purchase the bonds originated with Claimant J.K. MacDonald and not the broker. Respondent further maintained the Claimants authorized all of the transactions; any loss in the Claimants' account is the result of the Claimants' own actions and decisions; the Claimants voluntarily assumed the risk of every transaction; the Respondent had a right to rely on the representations made by the Claimants concerning their investment objectives and assets and any loss suffered by the Claimants is the result of fluctuations in the securities market for which Respondent cannot be held liable.

RELIEF REQUESTED

Claimants requested damages in the sum of \$220,156.36 plus punitive damages, Claimants' costs, expenses and disbursements including attorneys' fees; prejudgment interest and such other relief as the arbitration panel deems just and proper.

Respondent requested dismissal of all claims against them plus costs.

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 Respondent be and hereby is liable and shall pay to the Claimant Eloise R. MacDonald the sum of \$65,859.04 inclusive of interest.
2. All claims by the Claimant J.K. MacDonald against the Respondent are denied in all respects.
3. The Claimants' request for punitive damages and all other claims are denied.
4. The Respondent be and hereby is liable and shall pay to the Claimants the sum of \$950.00 to reimburse them their fees paid.

5. The Respondent be and hereby is liable and shall pay to the Claimant Eloise R. MacDonald the sum of \$23,803.00 representing attorneys' fees pursuant to O.C.G.A. Section 13-6-11.

FORUM FEES

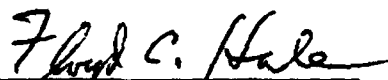
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.


7 sessions (\$750.00) + 1 pre-hearing conference (\$300.00) = \$5,550.00
less Claimant's hearing session deposit (\$750.00) = net \$4,800.00 due.


The Respondent be and hereby is liable and shall pay to the NASD the sum of \$4,800.00 representing the balance of the forum fees due and owing to the NASD.

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

ARBITRATORS' SIGNATURE


Floyd C. Hale
Public Arbitrator


Julie B. Greene, Esq.
Public Arbitrator


Joseph J. Tyler
Industry Arbitrator

NASD Date of Decision: February 22, 1994