

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimants

Robert Hayutin Estate, by Gary A. Pashel,
Personal Representative; The Robert Hayutin Insurance
Trust, by Gary Pashel, Co-Trustee; The Pashel
Family Trust, by Gary Pashel, Co-Trustee;
Mae Louise Pashel; and Gary A. Pashel

and

92-02745

Name of Respondents

Smith Barney, Harris, Upham & Co., Inc.

REPRESENTATION OF PARTIES

Robert Hayutin Estate, by Gary A. Pashel, Personal Representative; The Robert Hayutin Insurance Trust, by Gary Pashel, Co-Trustee; The Pashel Family Trust, by Gary Pashel, Co-Trustee; Mae Louise Pashel; and Gary A. Pashel ("Claimants") were represented by Jeffrey L. Smith, Esq. and Ann S. Closser, Esq. of Cohen Brame & Smith, Denver, Colorado.

Smith Barney, Harris, Upham & Co., Inc. ("Respondent") was represented by Susan E. Harkins, Esq. of Smith Barney, Harris, Upham & Co., Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about August 14, 1992. Amended Statement of Claim was filed on or about May 7, 1993. Submission Agreements of Claimant Robert Hayutin Estate, by Gary A. Pashel, Personal Representative was signed on September 25, 1992 by Gregg Hayutin, Personal Representative, Dennis Hayutin, Personal Representative and Gary Pashel, Personal Representative. Submission Agreement of Claimant The Robert Hayutin Insurance Trust, by Gary Pashel, Co-Trustee was signed on September 25, 1992 by Gary Pashel, Trustee. Submission Agreements of Claimant The Pashel Family Trust, by Gary Pashel, Co-Trustee was signed on September 25, 1992 by Gregg Hayutin, Trustee and Gary Pashel, Trustee. Submission Agreement of Claimant Mae Louise Pashel was signed on September 25, 1992. Submission Agreement of Gary A. Pashel was signed on September 25, 1992.

Statement of Answer was filed by Respondent on or about December 14, 1992. Submission

Agreement of Respondent Smith Barney, Harris, Upham & Co., Inc. was signed on December 10, 1992 by Susan E. Harkins.

HEARING INFORMATION

The hearing was held on Tuesday, June 29, 1993 for two (2) sessions and Wednesday, June 30, 1993 for two (2) sessions in Denver, Colorado for a total of four (4) sessions.

CASE SUMMARY

Claimants alleged that Respondent violated Colorado securities statutes, engaged in common law fraud, breached its fiduciary duty to them, and was negligent. In the Amended Statement of Claim, Claimants alleged that the investment in stock of USF&G was unsuitable for them. Claimants specifically alleged that Respondent failed to disclose information concerning the financial condition of USF&G, that the failure to disclose was made with the intent to induce Claimants to make investments in USF&G.

Respondent stated that the Claimants are wealthy, sophisticated investors, that the investment decisions for each of the accounts were made by Gary Pashel, a former broker and bank director who is a knowledgeable investor. Affirmative defenses asserted by the Respondent include but are not limited to the following: the Claimants have failed to state a claim upon which relief may be granted; the claims are barred by the statute of limitation and/or laches; assumption of the risk; failure to mitigate; and the claims are barred by the doctrines of waiver, estoppel and ratification.

RELIEF REQUESTED

Claimants requested rescission of their investments and return of the amount of their investments, plus interest, less any dividends received, and damages, including interest for any USF&G stock Claimants have sold. In the alternative, an award of damages representing the difference between their cost of their investments and the cost, net of liquidation costs, to dispose of their investments to the extent that they have not presently been liquidated plus lost dividends.

Respondent requested that the Statement of Claim be dismissed and that it be awarded all reasonable costs and expenses incurred in this matter.

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 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:

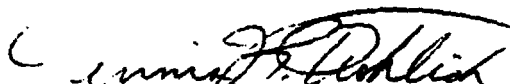
1. The claims asserted in this matter shall be and hereby are dismissed in their entirety.
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

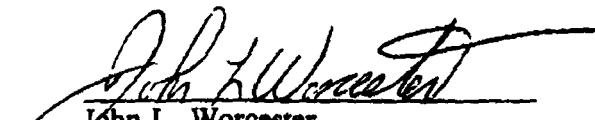
Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the N.A.S.D. by the Claimants. Claimants shall pay to the N.A.S.D. the sum of \$750.00 and Respondent shall pay to the N.A.S.D. the sum of \$1,500.00 as additional forum fees.

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference, if any. *Fees are payable to the National Association of Securities Dealers, Inc.*

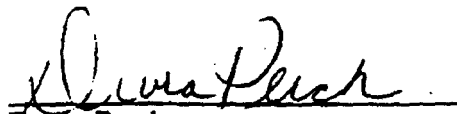
Dated:


Dennis R. Frohlich, Esq.
Public Arbitrator, Presiding Chair

June 30, 1993


John L. Worcester
Public Arbitrator

June 30, 1993


Devra Perch
Industry Arbitrator

June 30, 1993