

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

John H. Smith

and

92-02949

Name of Respondents

Smith Barney, Harris Upham & Co., Inc.
William G. Sellens

REPRESENTATION OF PARTIES

John H. Smith ("Claimant") was represented by Clifford L. Boem, Esq., Denver, Colorado.

Smith Barney, Harris Upham & Co., Inc. and William G. Sellens ("Respondents") were represented by Judith C. Greene, Esq. of Smith Barney, Harris Upham & Co., Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about September 4, 1992. Submission Agreement of Claimant was signed on August 7, 1992.

Statement of Answer was filed by Respondents on or about October 13, 1992. Submission Agreement of Respondent Smith Barney, Harris Upham & Co., Inc. was signed on October 12, 1992 by Judith C. Greene. Submission Agreement of Respondent William G. Sellens was signed on September 24, 1992.

HEARING INFORMATION

A pre-hearing conference was held on Tuesday, May 25, 1993 for one (1) session.

The hearing was held on Wednesday, September 15, 1993 for two (2) sessions, Thursday, November 11, 1993 for three (3) sessions in Denver, Colorado for a total of five (5) hearing and one (1) pre-hearing sessions.

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CASE SUMMARY

Claimant alleged that Respondents engaged in negligent misrepresentation, fraud, extreme and outrageous conduct, breach of fiduciary duty, intentional infliction of emotional distress. Claimant specifically alleged that Respondents failed to disclose withdrawal penalty charges that he may incur as a result of changing insurance policies. Claimant stated that the Respondents knew that he was purchasing life insurance solely as an investment that would yield tax-free monthly interest income to him and failed to disclose the true nature of the policies he was purchasing.

Respondents denied each and every allegation and stated that they acted responsibly with respect to Claimant's account and in accordance with his interests. Respondents stated that the Claimant initiated a discussion about the soundness of the Charter National Life Insurance Company. At that time, Sellens explained that there would be withdrawal penalties. Respondents further stated that Sellens also disclosed the withdrawal penalty provisions for the subsequent sale and purchase of an insurance policy.

RELIEF REQUESTED

Claimant requested an award in his favor and against the Respondents in an amount that will fairly and reasonably compensate the Claimant, including monetary damages in the amount of \$30,000.00 and damages for emotional distress, plus exemplary damages, costs and attorney's fees, and for such other relief as the arbitrators may deem proper.

Respondents requested that the Statement of Claim be dismissed in its entirety and that costs including travel of counsel be assessed against Claimant.

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. Respondents Smith Barney, Harris Upham & Co., Inc. and William G. Sellens shall be and hereby are jointly and severally liable for and shall pay to the Claimant John H. Smith the sum of *Seven thousand four hundred dollars* (\$7,400.00).

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2. No interest is awarded on the above stated sum.
3. 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 \$100.00 and shall retain as forum fees the hearing session deposit in the amount of \$400.00 previously deposited with the N.A.S.D. by the Claimant. Claimant shall be and hereby is liable for and shall pay to the N.A.S.D. the sum of \$750.00 and Respondents shall be and hereby are jointly and severally liable for and shall pay to the N.A.S.D. the sum of \$1,150.00 as additional forum fees.

Forum fees are calculated at the rate of \$400.00 per hearing session and \$300.00 for each prehearing conference, if any.

The N.A.S.D. shall retain postponement fees in the amount of \$400.00 previously deposited with the N.A.S.D. by the Claimant. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Mark M. Marzla, Esq.
Mark M. Marzla, Esq.
Public Arbitrator, Presiding Chair

November 23, 1993

s/ Bruce W. Brady, CPA
Bruce W. Brady, CPA
Public Arbitrator

November 22, 1993

Russell K. Bean, Esq.
Russell K. Bean, Esq.
Industry Arbitrator

December 13, 1993