

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimants**

Trujillo-O'Kieffe M.D. P.C. Trust Employee Benefit Trust  
Margaret Elizabeth Woods and Dr. Nelson P. Trujillo

92-03142

**Name of Respondents**

Smith Barney Harris Upham & Co., Inc.  
J. Frank Joyce, III

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**REPRESENTATION**

Claimants Trujillo-O'Kieffe M.D. P.C. Employee Benefit Trust ("Trust") and Margaret Elizabeth Woods ("Woods") and Dr. Nelson P. Trujillo ("Dr. Trujillo" herein collectively referred to as "Claimants") were represented by Arthur M. Schwartzstein, Esq., Attorney at Law., Washington, DC.

Respondents Smith Barney Harris Upham & Co., Inc. ("Smith Barney") and J. Frank Joyce, III ("Joyce") herein collectively referred to as "Respondents" were represented by David Levy, Esq., Senior Vice President, Associate General Counsel of Smith Barney, Inc.

**CASE INFORMATION**

Claimant's Statement of Claim filed on: September 15, 1992.

Claimant Trust's Submission Agreement signed on: October 9, 1992.

Claimant Woods' Submission Agreement signed on: August 12, 1992.

Claimant Dr. Trujillo's Submission Agreement signed on: August 12, 1992.

Claimant Dr. Trujillo's response to the counterclaim was filed on: January 11, 1993.

Respondents' Joint Statement of Answer was filed on: December 15, 1992.

Respondent Smith Barney's Submission Agreement signed on: December 14, 1992.

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**Respondent Joyce's Submission Agreement signed on: March 15, 1993.**

## HEARING INFORMATION

**Pre-Hearing Conference:** February 16, 1994, one session.

**Hearing Dates/Sessions:**

March 8, 1994, -	2 sessions
March 9, 1994, -	2 sessions
March 10, 1994, -	2 sessions
March 11, 1994, -	1 session
June 1, 1994, -	2 sessions
June 2, 1994, -	2 sessions

**Hearing Location:** ANA Hotel and the NASD, Executive Offices, Washington, DC.

## CASE SUMMARY

Claimants alleged, among other things, that improper and unlawful conduct of Respondents in managing Claimants' account. Claimant alleged that the Trust is a pension plan qualified under Employee Retirement Income Securities Act of 1974 as amended ("ERISA") and pursuant to ERISA Respondents' as fiduciaries were required to discharge their duty solely in the interest of participants and beneficiaries of the pension plan. Claimants alleged that Respondents failed to fulfill their obligations. Claimants alleged Respondents made unsuitable purchases of securities for Claimants' accounts. Claimants alleged that Respondents unduly concentrated Claimants' accounts in unsuitable investments such as, Dime Savings Bank, Perpetual Financial Corp., Texas Air Corp. and Eastern Airlines. Claimants alleged that Respondents failed to disclose the risks related to the investment strategy employed.

Respondents maintained, among other things, that the investment strategy that Claimants' now complain about was the strategy employed by Dr. Trujillo since 1974. That Respondents maintained that Dr. Trujillo was the person ultimately responsible for the purchase and sale of every transaction in his personal account as well as the Trust account. Respondents maintained that Dr. Trujillo was fully capable of and did in fact exercise his authority as a trustee to determine what

*type and how much of each investment his accounts and the Trust account would hold. Respondents maintained that Joyce did no more than execute orders. Respondents maintained that Dr. Trujillo was a sophisticated investor and that all trades were suitable. Respondents maintained that no fiduciary duty was owed by Respondents and if a fiduciary duty existed it was not breached.*

Respondents asserted a counterclaim that if Joyce or Smith Barney was found liable for losses to the Trust then Respondents alleged that Dr. Trujillo as the Trust fiduciary under ERISA should contribute to the award. Dr. Trujillo denied liability to the Respondents.

#### **RELIEF REQUESTED**

The Trust requested, in the pleading, damages in the approximate amount of \$1,000,000.00.

The Trujillos', in the pleading, requested damages in the amount of \$300,000.00. Claimants' requested treble damages under RICO, punitive damages in the amount of \$5,000,000.00 for the Trust and in the amount of \$1,000,000.00 for the Trujillos plus interest, costs, and attorney fees.

The Respondents requested that Claimants' claim be denied in its entirety and that if an award be found against the Respondents that the arbitrators should determine relative fault and apportion its award accordingly.

Dr. Trujillo requested that Respondents counterclaim be denied.

#### **OTHER ISSUES CONSIDERED & DECIDED**

At the hearing, the Panel agreed to allow the parties to submit their closing arguments in writing.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators' have decided in full and final resolution of the issues submitted for determination as follows:

1. That all claims made by the personal accounts are denied in their entirety.
2. That Smith Barney is liable to the Trust in the sum of \$116,290.00; inclusive of interest.
3. That Respondent Joyce is liable to the Trust in the amount of \$10,000.00; inclusive of interest.
4. All RICO damages are denied.
5. All Punitive damages are denied.
6. Respondents counterclaim is denied in its entirety.
7. That the parties shall bear their own costs and attorneys fees, except as specified below.

#### **FORUM FEES**

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

1 prehearing conference x \$300 = \$300.00 plus 11 hearing sessions x \$1500 = \$16,500.

**Forum Fees Assessed Against: Claimants and Respondents equally.**

Claimants are jointly and severally assessed Forum Fees in the amount of \$8,400, however, Claimant is entitled to offset this amount with their previously deposited hearing session fee of \$1,500 so that \$6,900 is due from Claimants.

Respondents Smith Barney and Joyce are jointly and severally assessed Forum Fees in the amount of \$8,400.


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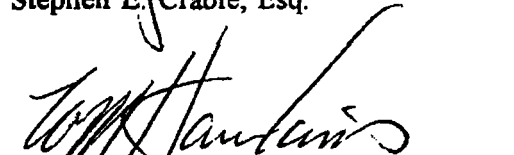
Fees are payable to the National Association of Securities Dealers, Inc.

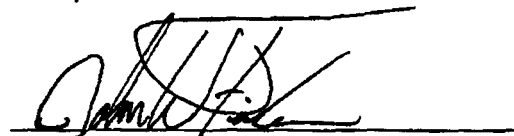
**ARBITRATION PANEL**

Stephen E. Crable, Esq.	-	Public Chairman
William M. Hawkins, Jr.	-	Public Panelist
John W. Fisher	-	Industry Panelist

Concurring Arbitrators' Signatures

  
Stephen E. Crable, Esq.

  
William M. Hawkins, Jr.

  
John W. Fisher

NASD Date of Decision: November 15, 1994