

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Steve Shirley

92-04000

Name of Respondent(s)

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

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**REPRESENTATION**

For Claimant Steve Shirley ("Claimant"): Steve Shirley appeared pro se.

For Respondents Smith Barney, Harris Upham & Co., Inc. and Mike Scarbrough ("Respondents"): David S. Friedman, Esq. from the firm of Smith Barney Shearson, Inc.

**CASE INFORMATION**

Statement of Claim filed: November 27, 1992.

Claimant's Submission Agreement signed on: November 3, 1992.

Joint Statement of Answer filed by Respondents, Smith Barney, Harris Upham & Co., Inc. ("Smith Barney") and Mike Scarbrough on: March 29, 1993.

Respondent, Smith Barney's Submission Agreement signed on: March 29, 1993.

Respondent Scarbrough did not execute a Submission Agreement.

**HEARING INFORMATION**

Pre-Hearing Conference: November 15, 1993 - One Session

Hearing Date/Sessions: November 18, 1993 - Two Sessions

Respondents maintained that in addition to discussing General Development with the claimant over a period of several months, respondent Scarbrough furnished the claimant with research reports which respondent Smith Barney's research department had prepared. Respondents further maintained that the claimant had the opportunity to carefully and thoroughly evaluate a wealth of information about the risks and rewards before he invested in General Development Corporation.

Respondents further maintained that General Development Corporation was a suitable investment for the claimant because the claimant fully understood the risks of investing in a growth stock and was able to afford the risks of investing in such a stock.

Respondents maintained that the claimant weighed the risks and rewards of the investment strategy of "averaging down" on his General Development Corporation shares as the price declined.

### **RELIEF REQUESTED**

Claimant requested that respondents be instructed to refund claimant's full investment of \$70,390.00, plus punitive damages of \$70,390.00 for a total amount of \$140,780.00.

Respondents requested that all claims by the claimant against the respondents be dismissed.

### **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. All claims against respondents Smith Barney and Mike Scarbrough be and hereby are dismissed in all respects.
2. All claims against respondents Smith Barney and Mike Scarbrough for punitive damages be and hereby are dismissed in all respects.
3. Each party shall bear their respective costs including attorneys' fees.

Hearing Location: The hearing was held at the NASD office at 3490 Piedmont Road, N.E., One Securities Centre, Atlanta, Georgia 30305.

### CASE SUMMARY

Claimant alleged that respondent Mike Scarbrough encouraged the claimant to buy stock in a company known as General Development Corporation. Claimant further alleged that respondent Scarbrough informed the claimant that the respondents' research had shown that this stock moved 6-8 points every year during the spring months, and had performed that way for sixteen years.

Claimant alleged that respondent Scarbrough told the claimant of an investor who was taking a very large position in the company and was going to take the company private. Claimant alleged that he relied totally on the advice of the respondents. Claimant further alleged that he was pressured and enticed to buy a stock of which he had no knowledge.

Claimant alleged that after the stock decreased in value, respondent Scarbrough encouraged the claimant to average down and make additional purchases of General Development Corporation stock. Claimant further alleged that on two separate occasions he made additional purchases.

Claimant alleged that on March 30, 1990, respondents recommended that he sell his position in General Development Corporation due to the anxiety in the Florida real estate market. Claimant further alleged that the respondents failed to advise the claimant of any legal investigation of the officers of General Development Corporation. Claimant alleged that in 1990, the CEO and several top officials of General Development Corporation were indicted on criminal charges and several months thereafter, they declared bankruptcy.

Claimant alleged that the loss he has suffered has caused him substantial mental anguish and financial hardship.

Respondents deny all allegations of wrongdoing asserted by the claimant and moved to dismiss all causes of action based upon claimant's failure to state a cause of action against respondents and claimant is not entitled to recover any damages against the respondents.

Respondents maintained that the claimant is an extremely sophisticated and experienced investor. Respondents further maintained that at the time the claimant invested in General Development Corporation, the claimant was a millionaire who frequently speculated with a portion of his allegedly massive wealth. Respondents maintained that the claimant was in the real estate business, and thus possessed his own pool of knowledge about General Development's business.

### FORUM FEES

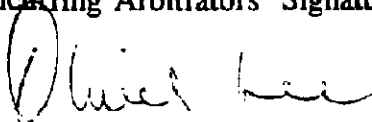
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

3 sessions X \$750 = \$2,250 minus hearing session deposit of 750 = net \$1500.00 due.

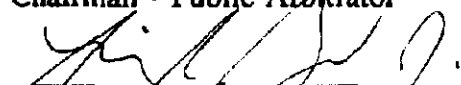
Forum fees assessed against respondent Smith Barney.

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

#### Concurring Arbitrators' Signatures



Oliver Lee, Esq.  
Chairman - Public Arbitrator



Sidney Barrett, Esq.  
Public Arbitrator



Alfred Shams  
Industry Arbitrator

Date of Decision: December 15, 1993