

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Scott T. and Barbara L. Norton

vs.

NASD #92-4103

Name of Respondents

Smith Barney, Harris, Upham & Co., Inc., Gary Hirata and
John-Erik W. Anderson

REPRESENTATION

For Claimant: Jann W. Carpenter, Esq., Seattle , WA

For Respondents: Alejandro Schwed, Esq., Smith Barney Harris Upham & Co., Inc., New
York, NY

CASE INFORMATION

Statement of Claim filed: December 7, 1992

Claimant's Submission Agreement signed: December 1, 1992

Statement of Answer filed by Respondents on: May 7, 1993

Respondents' Submission Agreements signed on: Smith Barney on May 7, 1993, Gary Hirata
on April 1, 1993 and John-Erik W. Anderson on April 1, 1993.

HEARING INFORMATION

Prehearing Conference(s) Date(s)/(Sessions): None

Hearing Date/(Sessions): October 26, 1993 (three)

Hearing Location: Seattle, WA

CASE SUMMARY

Claimants alleged: Lack of suitability in the sale of New American High Fund, (Fund) a high yield bond fund. Claimants were and are unsophisticated investors in securities and informed Respondents that they were retiring or retired, did not want to incur risk and were dependent on the investment income. The Fund had substantial capital risk among its characteristics and Respondents failed to warn Claimants that it was not in keeping with their investment requirements. The Fund declined in market value causing Claimants to incur a loss of approximately \$45,000, which Respondents counseled Claimants to disregard.

Respondents denied all substantive allegations of the Statement of Claim and alleged: Claimants opened accounts with Respondent John-Eric Anderson (Anderson) approximately 10 years ago and were interested primarily in mutual funds. Claimant Scott Norton managed his own investments with many ideas originating with him. In 1989 he asked Anderson to recommend a mutual fund which would provide a higher return than six or seven percent. Anderson suggested the Fund, explained the risks and sent them relevant materials.

After the purchase of the shares, the Fund value began to decline, which Claimants were aware of and discussed with Anderson. Claimants made their own independent decision to sell the shares in March of 1990.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages of \$45,114.56;
2. Interest at the legal rate.

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 originals remain on file with the NASD.

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 and John-Erik Anderson are jointly and severally liable for and shall pay Claimant \$9,000.00 in compensatory damages, plus interest at the legal rate from the date of the Award to the date paid;
2. All claims against Gary Hirata are dismissed;
3. The parties shall each bear their respective attorney's fees;
4. The parties shall each bear their respective costs.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc. shall retain the \$400.00 hearing session deposit previously deposited by the claimant. Forum fees assessed against:

Claimant for \$500.00, in addition to \$400.00 already paid as a hearing deposit;

Respondent Smith Barney and John-Eric Anderson jointly and severally for \$300.00,

calculated as follows: three hearing sessions at \$400.00/hearing session, equals \$1,200.00, minus \$400.00 already paid by the claimant as a hearing deposit.

Fees are payable to the National Association of Securities Dealers,

ARBITRATION PANEL

Name

Public/Industry

Concurring Arbitrators' Signature

Robert M. Stein

Frank P. Blakeslee

Frank A. Pritchard, Jr.

Frank A. Pritchard, Jr.

Substantive

Date of Decision: 11-1-93

Date Served: 11/15/93