

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Helen O. Toth and the Estate of Zsigmund J.
Toth

92-04255

Name of Respondents

Smith Barney Harris Upham & Co., Inc. (n/k/a Smith Barney, Inc.)
Raymond F. Faby

REPRESENTATION

The Claimants Helen O. Toth and the Estate of Zsigmund J. Toth ("Claimants") were represented by Richard W. Drury, Esq. and Alexander R. McMullen, Esq. of the law firm of McMullen & Drury, P.A., Towson, Maryland.

The Respondents Smith Barney Harris Upham & Co., Inc. (n/k/a Smith Barney, Inc.) and Raymond F. Faby (collectively referred to as "Respondents") were represented by Susan E. Harkins, First Vice President, Smith Barney, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: December 21, 1992
First Amended Statement of Claim filed: July 14, 1995
Claimants Zsigmund J. Toth ("Dr. Toth") and Helen O. Toth ("Mrs. Toth") executed their Submission Agreement on: February 2, 1993
State of Maryland Letters of Administration of Small Estate filed for the Estate of Zsigmund John Toth filed: January 25, 1995
Submission Agreement executed by Helen O. Toth, individually and by Helen O. Toth - on Behalf of the Estate of Zsigmund Toth and as surviving tenant of the entirety on September 20, 1995.

Joint Statement of Answer filed by Respondents Smith Barney Harris Upham & Co., Inc. ("Smith Barney") and Raymond F. Faby ("Faby") on: April 20, 1993

Respondents' Joint Answer to the First Amended Statement of Claim filed on: September 14, 1995

Respondents' Submission Agreement signed on: May 3, 1993

HEARING INFORMATION

Hearing Dates/Sessions: September 20, 1995 - two sessions
September 21, 1995 - two sessions
September 22, 1995 - three sessions

Hearing Location: Holiday Inn, Inner Harbor - Baltimore, Maryland

CASE SUMMARY

Claimants alleged that Faby brought Dr. and Mrs. Toth's accounts from Merrill Lynch to Smith Barney. Claimants alleged that they were unsophisticated investors who did not understand the risks related to the direct investments which represented greater than 50% of Dr. Toth's retirement account and greater than 50% of Mrs. Toth's IRA. Claimants alleged that Faby recommended the direct investments to Claimants but that he never discussed Mrs. Toth's financial matters with her.

Claimants stated that Dr. Toth suffered a stroke in 1984 which left him dull and somewhat disinterested in pursuits he enjoyed prior to his stroke. Claimants alleged that subsequent to Dr. Toth's stroke and subsequent to his account transferring to Smith Barney, Respondents dramatically changed the pattern of investing in Dr. Toth's pension account. Claimants alleged that the accounts which had consisted of governmental securities and corporate bonds were converted into accounts with a predominance of illiquid, devaluing securities. Claimants alleged that these investments were unsuitable.

Claimants alleged that an inordinately high amount of purchases were placed in one family of limited partnerships - Krupp. Claimants alleged that Faby suggested the purchase of the Krupp limited partnerships. Claimants alleged that these purchases in limited partnerships did not meet the Claimants financial needs and objectives as they were illiquid and risky. Claimants asserted that the limited partnerships were more risky than the GNMA's that Faby advised them to sell.

Claimants alleged that Faby was presented with the choice of purchasing securities carrying a commission of one to two percent commission or receiving a mark-up of six to eight percent on the limited partnerships. Claimants alleged that Faby, seeing personal opportunity, chose the latter ignoring the Claimants' best interests.

Respondents categorically denied all allegations of wrongdoing. Respondents maintained that Dr. Toth, a practicing obstetrician/gynecologist, represented himself to be wealthy,

educated and readily able to understand and make investment decisions. Respondents maintained that Claimants were satisfied with their broker Faby and that they transferred their accounts from Merrill Lynch to Smith Barney when Faby changed firms. Respondent maintained that Claimants never complained about the suitability of any of their investments to Faby, his branch manager or anyone else at Smith Barney. Respondents maintained that although Claimants transferred their accounts in 1990, they only learned of Claimants' complaints over two years later when the Claimants filed their arbitration. Respondents maintained that when Claimants opened their accounts with Respondents, their stated investment objective was income and growth. Respondents maintained that every investment was discussed by Faby with Dr. Toth and that Dr. Toth authorized or ratified every purchase and sale. Respondents maintained that all investments were suitable for Claimants and met their stated investment objectives.

Respondents maintained that not only were the investments discussed with Claimants but also the Claimants were given prospecti which outlined, among other things, the risks of the investments. Respondents maintained that the Claimants have received substantial distributions from their limited partnership interest, thus furthering their income objectives. Respondents assert that some of the alleged losses that Claimants seek are based on investments made more than six years ago and pursuant to Section 15 of the NASD Code of Arbitration Procedure are time barred. Additional affirmative defenses asserted by Respondents are as follows: the claims are barred by the doctrines of waiver, estoppel and ratification; all or some of the claims are barred by the relevant statutes of limitations; the claim for punitive damages are barred as a matter of law; and the claims for compensatory damages are vague and speculative.

RELIEF REQUESTED

Claimants requested, in their First Amended Statement of Claim, damages in the amount of \$469,266.65; plus punitive damages in the amount of \$1,000,000; lost opportunity costs, pre-award interest, post award interest and all costs associated with this action.

Respondents requested that Claimants' claim be dismissed in its entirety and that all reasonable costs and expenses incurred by Respondents should be assessed to Claimants.

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.

The Panel determined that all estate beneficiaries and heirs are bound by the Award based on the representations made by Claimant Helen O. Toth and her attorney at the hearing.

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 as to Zsigmund J. Toth - "A" Pension Fund
Smith Barney Account No. 023-868175:
 - a) Respondents Smith Barney and Faby are jointly and severally liable to Claimants and shall rescind 4000 units of Krupp Insured Plus III at \$20 per unit and the remaining 4064.8 units of Krupp Insured Plus III shall be rescinded at \$13.30 per unit.
 - b) Respondents Smith Barney and Faby are jointly and severally liable to Claimants and shall rescind 3077.8 units of Krupp Insured Plus at \$16.90 per unit.
 - c) Respondents Smith Barney and Faby are jointly and severally liable to Claimants and shall buy back the units of Corporate Realty Income Fund at the current market rate on the date the award is served.
2. That as to Helen O. Toth - IRA
Smith Barney Account No. 023-783455:
 - a) Respondents Smith Barney and Faby are jointly and severally liable to Claimants and shall rescind the purchase of Krupp Insured Plus III 2097.7738 units at \$20 per unit.
 - b) Respondents Smith Barney and Faby are jointly and severally liable to Claimants and shall rescind 2500 units of Krupp Cash Plus IV at \$20 per unit.
3. That Claimants' claim for punitive damages is denied in its entirety.

4. That the parties shall bear their respective costs and attorneys' fees except as specifically addressed herein.
5. That all other claims for relief are denied in their entirety.

OTHER COSTS

Any and all postponement fees deposited in this matter shall be retained by the NASD, Inc.

FORUM FEES

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

7 hearing sessions X \$1,000 = \$7,000 due

Forum fees are assessed against Respondents Smith Barney and Faby. Claimants have deposited a \$1000 hearing session deposit which Respondents are directed to refund directly to Claimants. Respondents shall pay the balance of \$6,000 to the NASD, Inc.

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

DATE:

Concurring Arbitrators' Signatures

11/10/95

Anne W. Larkin
Anne W. Larkin, Chairperson
Public Arbitrator

Pat Sean Dolan
Public Arbitrator

Gordon F. Linke
Industry Arbitrator

Date Award Served by the NASD, Inc.:

November 17, 1995

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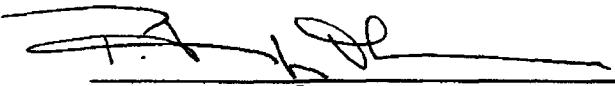
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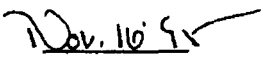
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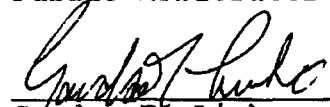
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Anne W. Larkin, Chairperson
Public Arbitrator

Pat Sean Dolan
Public Arbitrator

11/15/95


Gordon F. Linke
Industry Arbitrator

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November 17, 1995