

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Joseph M. McGovern

93-00029

Name of Respondents

Smith Barney Harris Upham & Co., Inc.
John J. Connors

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 5, 1993, Claimant Joseph M. McGovern, who appeared Pro Se, alleged that Respondent John J. Connors, stockbroker for Respondent Smith Barney, Harris Upham & Co., Inc. recommended and sold Claimant an equipment leasing limited partnership, American Income Partners IV-C, which was an unsuitable investment considering Claimant's overall financial situation, investment objectives, level of investing experience, risk tolerance and the investor suitability standards outlined in the prospectus. Claimant further alleged that Respondent John J. Connors also sold him a mortgage backed limited partnership Krupp Insured Plus III which was an unsuitable investment considering Claimant's need for liquidity and level of investing experience. Claimant contended that prior to selling him American Income Partners IV-C limited partnership, Respondent John J. Connors failed to advise him of the investor suitability standards contained in the prospectus. Claimant asserted that Respondent Smith Barney, Harris Upham & Co., Inc. did not take steps to ensure or verify that Respondent John J. Connors was advising Claimant of the long term nature, risks, complexity, investor suitability standards and lack of a market for American Income Partners or Krupp Insured prior to permitting Respondent John J. Connors to sell the limited partnership to Claimant over the phone.

Respondents Smith Barney, Harris Upham & Co., Inc. and John J. Connors, by and through their in-house counsel, Judith C. Green, Esq., maintained that the purchases referred to in the complaint were made by Claimant Joseph M. McGovern to provide diversification in his portfolio; moreover, Claimant received a prospectus describing in detail, the business, including the risks of both limited partnerships. Respondents further maintained that Claimant signed two

subscription agreements wherein he acknowledged receiving the prospectuses and knew both investments were non-trading. Respondents contended that Claimant decided to make the purchases and at all times Claimant controlled the account and he did not question the investments until more than four years after he purchased the stock. Respondents further contended that at all times Respondent Smith Barney, Harris Upham & Co., Inc. and its employees acted in the best interest for Claimant, and the securities recommended to him were in accordance with the stated objectives for the account he established.

RELIEF REQUESTED

Claimant Joseph M. McGovern requested \$10,000.00 in actual damages.

Respondents Smith Barney, Harris Upham & Co., Inc. and John J. Connors requested the claim be dismissed in its entirety and costs be assessed against Claimant.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Susan L. Donegan, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on December 28, 1992 and not by the Respondents as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Smith Barney, Harris Upham & Co., Inc. and John J. Connors are jointly and severally liable and shall pay to the Claimant Joseph M. McGovern the sum of \$5,509.00 in damages.
2. Respondents Smith Barney, Harris Upham & Co., Inc. and John J. Connors are jointly and severally liable and shall pay to the Claimant Joseph M. McGovern simple interest at the rate of 12%; Massachusetts Statutory interest rate; from January 1, 1989 to January 1, 1991.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Joseph M.

McGovern shall be retained by the NASD, Inc. Respondents Smith Barney, Harris Upham & Co., Inc. and John J. Connors are jointly and severally liable and shall pay to the Claimant the sum of \$75.00 as partial reimbursement.

AFFIRMATION

I, SUSAN L. DONEGAN, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: May 18, 1993