

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Eric Stoer & Anne Wilson Heslop, Trustees on behalf
of the Thomas A. Wilson Remainder Trust

vs.

AWARD
#93-00283

Name of Respondents

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

REPRESENTATION

For Claimant Eric Stoer & Anne Wilson Heslop, Trustees on behalf of the Thomas A. Wilson Remainder Trust ("Claimant"): Jeffrey P. Bloom, Esq. of the law firm of Metzger, Hollis, Gordon & Mortimer, Washington, D.C.

For Respondents Smith Barney Harris Upham & Co., Inc. and J. Frank Joyce, II ("Respondents"): David Levy, Senior Vice President, Smith Barney Shearson, Inc., New York, N.Y.

CASE INFORMATION

Statement of Claim filed: January 25, 1993

Claimant's Submission Agreement signed by Trustee Eric F. Stoer on: January 6, 1993

Claimant's Submission Agreement signed by Trustee Anne Wilson Heslop on: January 13, 1993

Respondents Joint Statement of Answer filed: March 25, 1993

Smith Barney Harris Upham & Co., Inc.'s ("Smith Barney") Submission Agreement signed on: March 24, 1993

J. Frank Joyce, II's ("Joyce") Submission Agreement signed on: March 5, 1993

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HEARING INFORMATION

Hearing Dates/Sessions: May 11, 1994 - two sessions
 May 12, 1994 - two sessions

Hearing Location: NASD Offices, Washington, D.C.

CASE SUMMARY

Claimant alleged that Respondent Joyce recommendations regarding investments in the three securities was unsuitable and inappropriate and did not provide the requested diversification outlined by Eric Stoer ("Stoer") and Anne Wilson Heslop the Trustees ("Trustees").

Claimant alleged that Joyce embarked on a program of concentrating an unreasonable large percentage of Trust assets in these three securities, Continental Airline Holding Corp. (formerly Texas Air Corp), Dime Savings Bank of New York, and Perpetual Finance Corp.

Claimant alleged that as the prices of the stocks dropped, Joyce pursued his policy of "averaging down" and sold other securities in the Trust to purchase more of these three stocks. Claimant alleged that Joyce led the Trustees to believe that the stock purchases were conservative and relatively low-risk investments, and that Joyce had complete detailed and up-to-the minute understanding of the financial strength of these stocks. Claimant further alleged that Joyce never recommended selling these stocks, and, in fact, recommended holding them even when Joyce's firm held a contrary position. Claimant alleged that Joyce's actions constituted a breach of his fiduciary duties owed to the Trust, a breach of his contract with the Trustees, negligence and common law fraud. Claimant alleged that Respondent, Smith Barney is liable to the Trustees on the basis of Respondeat Superior as all acts taken by Joyce in his dealings with the Trustees were undertaken in the course of his employment with Smith Barney. Claimant alleged that Smith Barney is further liable in that it failed to adequately supervise Joyce and Claimant's account.

responsibility to select from among them as to how many shares of a given stock should be bought or held. The Respondents maintained that Stoer made all decisions regarding what to buy, when to buy it, what to sell, when to sell it and how much of what to own at any given time. Respondents maintained that the Trusts were hardly conservative since the amount of money taken out of the Trusts annually could not be generated as income by investing the Trusts' assets solely in traditional conservative vehicles like investment-grade bonds, Government National Mortgage Association and Treasury notes. Respondents maintained that Stoer demanded capital gains and insisted upon his own investment strategy even where Joyce counselled against it. The Respondents maintained that the Trust should not be permitted to foist the responsibility for those decisions upon its stockbroker merely because some of the investments which were the subject of those decisions have not fared well.

RELIEF REQUESTED

Claimants requested an award of \$165,312.00, plus costs and reasonable attorneys' fees.

Respondents requested that the Claim be dismissed and that all costs of the proceedings be assessed against 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 heard oral arguments regarding Respondents' Motion to Dismiss based upon a lack of evidence produced by the Claimants at the hearing. The Panel denied such Motion.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrator(s) has/have decided in full and final resolution of the issues submitted for determination as follows:

- I. Respondents, Smith Barney Harris Upham & Co., Inc. and J. Frank Joyce, II, are liable jointly and severally and shall

has/have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Smith Barney Harris Upham & Co., Inc. and J. Frank Joyce, II, are liable jointly and severally and shall pay to the Claimants the sum of \$29,750.00, exclusive of interest.
2. Each party shall bear their respective costs including attorney fees.

FORUM FEES

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

$$4 \times \$750 = \$3,000$$

Claimant and Respondents shall be equally assessed forum fees. Claimant is assessed forum fees in the amount of \$1,500; however, Claimant is entitled to offset its forum fees with its \$750 hearing session fee previously deposited. Therefore, the amount due from the Claimant as forum fees is \$750. Respondents Smith Barney and Joyce are jointly and severally assessed forum fees in the amount of \$1,500.

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

Concurring Arbitrator's Signature

Public/Industry


Ozzie Bermant

NASD Date of Decision: June 14, 1994

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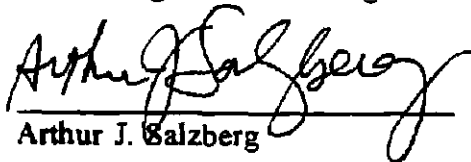
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Arthur J. Salzberg

Public/Industry

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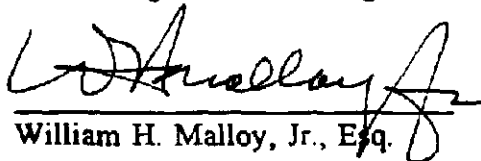
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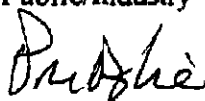
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Concurring Arbitrator's Signature


William H. Malloy, Jr., Esq.

Public/Industry


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