

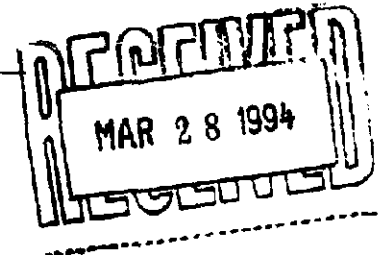
N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Hyman Schwartzberg Testamentary Trust



93-02564

Name of Respondent

Smith Barney Harris Upham & Co., Inc.

REPRESENTATION

For Claimant, Hyman Schwartzberg Testamentary Trust ("Schwartzberg Trust"): Melvin N. Lechner of MNL Consultants, Inc.

For Respondent, Smith Barney Harris Upham & Co., Inc. ("Smith Barney"): John P. Bevilacqua, Esq. of Smith Barney Harris Upham & Co., Inc.

CASE INFORMATION

Statement of Claim filed: June 30, 1993.

Claimant's Submission Agreement signed on: June 2, 1993.

Statement of Answer filed by Respondent, Smith Barney on: October 4, 1993.

Respondent, Smith Barney's, Submission Agreement signed on: October 4, 1993 by John P. Bevilacqua as Vice President of Smith Barney.

HEARING INFORMATION

On March 3, 1994 in Fort Lauderdale, Fl. a hearing lasting two (2) sessions was conducted.

CASE SUMMARY

Claimant, alleged that Respondent, through its employees, purchased unsuitable investments for Claimant's account; did not disclose to Claimant the risk and

security of the investments purchased; violated the "know your customer" rule; failed to exercise reasonable care in handling Claimant's account and failed to properly supervise personnel handling Claimant's account.

Respondent alleged that Claimant's representative was fully informed concerning the investments made; said investments were consistent with Claimant's objectives; Claimant's losses were the result of market forces beyond Respondent's control and Claimant's haste in liquidating the account. Respondent stated the affirmative defenses of; failure to state a claim; Failure to mitigate damages; waiver; estoppel; and ratification.

#### **RELIEF REQUESTED**

Claimant requested: Specific Damages of \$5,992.19 plus interest and punitive damages.

Respondent requested: Dismissal of all claims plus all costs of the proceeding including a reasonable attorneys fee.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Smith Barney, is found not liable and, therefore, all claims against it are hereby dismissed.
2. Respondent's request for attorneys fees and costs is hereby denied.

#### **OTHER COSTS**

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

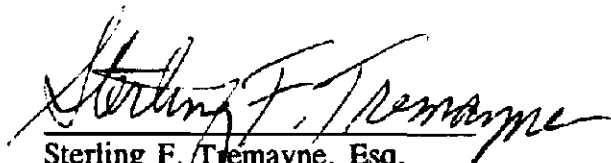
**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$400.00 ( 2 Sessions x \$200.00).

1. Claimant is hereby assessed forum fees of \$200.00 for which the NASD shall retain the \$200.00 previously deposited in full satisfaction thereof.
2. Respondent is hereby assessed forum fees of \$200.00 payable to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the \$75.00 non refundable filing fee paid by the Claimant.

**ARBITRATOR**

**Arbitrator's Signature**

  
Sterling F. Tremayne, Esq.  
(Sole Public Arbitrator)

Date of Decision: March 28, 1994