

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

**In the Matter of the Arbitration Between**

**Name of Claimant**

Grady Greer, Trustee for Toledo Carolina  
Profit Sharing Plan and FBO Toledo Carolina  
Profit Sharing Trust

93-03767

**Name of Respondents**

Smith Barney Harris Upham & Co., Inc.  
John Davidson

**REPRESENTATION**

For Claimant Grady Greer, Trustee for Toledo Carolina Profit Sharing Plan and FBO Toledo Carolina Profit Sharing Trust ("Claimant"): William Reynolds Williams, Esq., from the law firm of Willcox, McLeod, Buyck, Baker & Williams, Florence, SC

For Respondent Smith Barney Harris Upham & Co., Inc. ("Smith Barney"): Larry H. Irom, Esq., Managing Director, Smith Barney Harris Upham & Co., Inc., New York, NY

Respondent John Davidson ("Davidson") appeared *pro se*

**CASE INFORMATION**

The Statement of Claim was filed September 20, 1993  
Claimant's Submission Agreement signed on September 10, 1993

The Answer was filed by Smith Barney on January 17, 1994  
Smith Barney's Submission Agreement was signed on January 14, 1994

The Answer was filed by Davidson on January 24, 1994  
No Submission Agreement was executed by Davidson

**HEARING INFORMATION**

Hearing Dates/Sessions: May 23, 1995/one session  
May 24, 1995/two sessions  
August 29, 1995/two sessions  
August 30, 1995/two sessions  
November 7, 1995/two sessions

Hearing Location: May 23-24, 1995/Hyatt Hotel  
Charlotte, NC  
August 29-30, 1995/Hyatt Hotel  
Charlotte, NC  
November 7, 1995/Holiday Inn-Airport  
Charlotte, NC

**CASE SUMMARY**

Claimant alleged in their Statement of Claim, among other things, that Respondents failed to make investment decisions in accordance with an investment strategy agreement. Claimant alleged that the investment strategy agreement of its profit sharing trust plans provided for (1) the protection of principal as the first priority; (2) that no more than 50% invested into Real Estate and no more than 50% invested into Stocks and Bonds; and, (3) that no more than 10% of the total plan would be allocated to aggressive investments. Claimant alleged that Respondents induced them to purchase investments which included SCORES, PRIMES, PERCS and other complex derivative instruments. Claimant alleged that these securities were speculative and high risk securities. Claimant alleged these high risk securities comprised a significant percentage of the total value of securities purchases and trading losses. Claimant alleged that account assets were invested by Respondents in high-risk limited partnership ventures that were totally inappropriate for Claimant's trust accounts. Claimant also alleged that account funds were traded by Respondents without regard to Claimant's investment objectives or suitability of investments for the trust account. The Claimant further alleged that the conduct of Respondents constituted (1) material breach of contract, (2) breaches of statutory and common-law fiduciary duties and (3) violations of Federal and State securities laws.

Respondents denied in their Answer all allegations raised by Claimant's Statement of Claim. Respondents maintained, among other things, that Claimant, as Trustee, had the responsibility to monitor and review the transactions in the profit sharing trust plan accounts. Respondents maintained that Davidson was in constant contact with Claimant and discussed each transaction with Claimant. Respondents maintained that Claimant did not name any security as being speculative or high risk. Respondents maintained that securities purchased by Respondents were growth and income mutual funds which provided significant distribution to Claimant. Respondents maintained that Claimant is a knowledgeable and informed investor. Respondents maintained that confirmations and monthly statements were provided to Claimant, as well as to a third party who was also monitoring the accounts. Respondents maintained that Claimant never complained, nor did the third party complain, to Respondents until three and one half years after Davidson left Smith Barney. Respondents further maintained that Claimant knew what investments were suitable and appropriate in frequency and Claimant authorized each transaction. Respondents maintained that

the trades were suitable and not excessive. Therefore, Respondents maintained that any losses sustained by Claimant were the result of Claimant's own actions and decisions.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$298,412.00, interest, costs of the arbitration, including reasonable attorney's fees, and punitive damages.

Respondents requested that the Claimant's claim be dismissed and Respondents awarded the costs of the arbitration, including reasonable attorney's fees.

#### 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 original remains on file with the NASD.

No Uniform Submission Agreement was on file for John Davidson. However, having filed an Answer and pursuant to Section 12 of the NASD Code of Arbitration Procedure ("Code"), the Panel ruled that Davidson is bound by the determination of the arbitrators.

#### 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 are jointly and severally liable to and shall pay to Claimant \$23,500.00 plus 8% simple interest per annum from September 20, 1993 until the date the Award is paid.
2. Claimant's claim for punitive damages is denied.
3. Parties shall bear their own costs, including attorney's fees, except as specifically addressed herein.
4. Any and all relief not specifically addressed herein is denied in its entirety.

**FORUM FEES**

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

9 sessions X \$750.00 = \$6,750.00

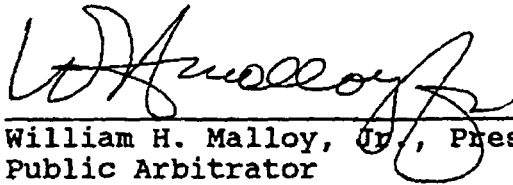
Forum Fees in the amount of \$2,250.00 assessed against Claimant. Claimant shall receive credit for the \$1300.00 hearing deposit previously filed, leaving a balance due from Claimant of \$950.00. Respondents shall be jointly and severally liable for Forum Fees in the amount of \$4,500.00.

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

Date

12/21/95

Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
William H. Malloy, Jr., Presiding  
Public Arbitrator

\_\_\_\_\_  
Hugh M. Eggan  
Public Arbitrator

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Alexander I. Heckman  
Industry Arbitrator

Date Award Served by NASD: December 27, 1995

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