

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Douglas and Patricia Poole

Claimant(s)

**NASD Arbitration
No. 94-01187**

v.

**Smith Barney Harris Upham & Co., Inc.
Michael E. Kolb**

Respondent(s)

REPRESENTATION OF PARTIES

Douglas and Patricia Poole ("Claimant") was represented by Anthony M. Englese, Esq., San Francisco, California.

Smith Barney Harris Upham & Co., Inc. ("Respondent") was represented by James S. Goddard, Esq., Smith Barney Inc., New York.

Michael E. Kolb ("Respondent") was represented by James S. Goddard, Esq., Smith Barney Inc., New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about March 28, 1994. Claimant's Submission Agreement was signed on March 18, 1994.

Respondents Smith Barney Harris Upham & Co., Inc. and Michael E. Kolb's Joint Statement of Answer was filed on or about November 11, 1994. The Submission Agreement for Smith Barney Harris Upham & Co., Inc. was signed on November 10, 1994. The Submission Agreement for Michael E. Kolb was signed on November 14, 1994.

HEARING INFORMATION

The hearing was held on February 27, 1996 in San Francisco, California for a total of two sessions.

CASE SUMMARY

Claimants alleged intentional and negligent misrepresentation, breach of fiduciary duty, violation of the California Corporations Code and violation of Section 10(b) of the Securities Exchange Act of 1934 and of Rule 10b-5 with respect to the purchase of two real estate limited partnerships. Claimants further alleged that the investments were unsuitable and created and excessive concentration in speculative, illiquid investments in the Claimant's account.

Respondent denied the allegations set forth in the Statement of Claim. Respondents specifically argued that the Claimants overriding investment objective was growth and that due to their experience in real estate the Claimants themselves believed that real estate investments provided the greatest possibility for dramatic growth. Respondents further argued that the Claimants received prospectuses and had full knowledge of the investments and were suitable for the investments based on their net worth, income and objectives.

RELIEF REQUESTED

Claimant requested an award in the amount of \$66,000.00 in compensatory damages and rescission of the Krupp and Marriott investments. Additionally, the Claimants requested an award of punitive damages, attorney's fees and costs.

Respondents requested that the claim asserted against them be denied in its entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies 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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Each and every claim of the Claimants is dismissed;
2. Claimants request for an award of punitive damages is denied;

3. Each party must bear its own costs including attorney's fees.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There were 2 sessions x \$500 = \$1000 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. Pursuant to §43(c) of the Code of Arbitration Procedure, the parties shall divide the forum fees 50%-50%, with the claimant bearing 50%, and the respondents jointly and severally bearing 50%.


Total Fees	
2 Hearing Sessions @ \$500.00 =	\$1000.00
Total	<u>\$1000.00</u>
Claimant's 1/2 share	\$ 500.00
Claimant's credit for deposit	<u>\$ 500.00</u>
Claimant's balance	\$ -0.00-
Respondent's joint and several share	<u>\$ 500.00</u>
Respondent's Balance	\$ 500.00

Pursuant to §43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$150 and shall retain as forum fees the hearing session deposit in the amount of \$500 previously deposited with the NASD by the Claimant Douglas and Patricia Poole.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$200 previously paid by Smith Barney Inc.

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

Dated:



Thomas Mulvihill, Esq.
Public Arbitrator, Presiding Chair

3/1/96

Jimmy Lofton
Public Arbitrator

Wilford Nelson
Industry Arbitrator

Date Served 03/26/96