

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Robert L. & Ruth A. Skiera, JTWROS

95-05904

Name of Respondent

Smith Barney Inc.

CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on December 19, 1995, claimants, Robert L. & Ruth A. Skiera and JTWROS ("claimants") who appeared Pro Se, alleged that on November 12, 1985, they purchased from E.F. Hutton, Inc. now, Smith Barney, Inc. ("respondent"), ten units of a limited partnership known as Hutton/GHS commercial Properties 4 at \$500.00 a unit. Claimants further alleged that the account executive, William Grauel ("Grauel"), now deceased, said that they would receive a return of 10% and that the investment would be worth \$14,000.00 when the partnership terminated in five to eight years. Claimants also alleged that they have received a return of only \$93.20 on their investment. Claimants also alleged that the partnership was wrongfully sold to them because they did not meet the minimum net worth requirements and because Grauel did not ask pertinent questions. Claimants asserted that they invested in the partnership to fund their children's college education. Claimants further asserted that Grauel was replaced by Rudy Stimac ("Stimac") who told them there was nothing they could do about the investment and that he never sold the product because he knew any fund that paid 8% commission had to have something wrong with it. Claimants also asserted that respondents' response to their complaints were unsatisfactory. Claimants alleged that respondent, as the general partner in the partnership, owed them a fiduciary duty that they breached by telling them their investment was fine and they should not worry. Claimants further alleged that respondent told them their investment was fine as early as two to three years into the investment and since the partnership was receiving no benefits, these statements by respondent are clearly fraudulent. Claimants also alleged that they did not seriously question the status of their account until the time for the supposed "buyout" had come and gone and they had no way to determine there was a problem with the investment until 1993. Claimants asserted that the six year time limit is not applicable because there has been wrongdoing on the part of respondent within the last six years because, under the terms of the limited partnership, the claimants were to receive distribution in any year cash flow was reported and cash flow has been received for a number of years and the claimants have received nothing. Claimants further asserted that barring their claims because of the six year time limit is inequitable because it was respondent's actions that kept claimants from bringing the arbitration before this time. Claimants further contended that their investment is now almost worth nothing. Claimants also contended that they are keeping their damages amount to \$10,000.00 to avoid extra arbitration expenses.

Respondent maintained, through their in-house-counsel Ann Parry, that Claimants' claim was submitted ten years after the date of purchase and their claims are therefore barred by Section 15 (now Rule 10304) of the National Association of Securities Dealers Code of Arbitration Procedure ("the Code") which prevents claims where six years have elapsed from the occurrence or event giving rise to the act or dispute. Respondent further maintained that this section is a jurisdictional requirement and not a limitations period therefore it cannot be tolled by allegations of fraudulent concealment and is an absolute bar to arbitration.

RELIEF REQUESTED

Claimants requested an award of \$10,000.00

Respondent requested that Claimants' claim be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

The arbitrator reviewed and considered respondent Smith Barney's Inc. Motion to Dismiss pursuant to Rule 10304 (formally Section 15) of the NASD Code of Arbitration Procedure. The motion was granted.

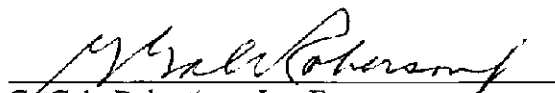
AWARD

Pursuant to Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, G. Gale Robertson, Jr., Esq. was selected to review the matter in controversy between the parties set forth in the Submission to Arbitration signed by claimants Robert L. & Ruth A. Skiera, JTWROS on December 8, 1995 and respondent Smith Barney, Inc. did not file a Submission Agreement as required by Rule 10314(b) of the 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. The claims of claimants are dismissed in their entirety.
2. All other requests for relief are denied.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers Regulation Inc. by claimants shall be retained by NASD Regulation, Inc. and the Respondent is liable and shall pay to claimants \$125.00 as reimbursement of the filing fee.

AFFIRMATION

I, G. Gale Robertson, Jr., Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


G. Gale Robertson, Jr., Esq.

Date of Decision: June 9, 1997