



In the Matter of the Arbitration between		:
		:
		:
	Claimant,	:
v.		:
		:
SMITH BARNEY, HARRIS UPHAM & CO., INC.,		:
Respondent.		:

AWARD

MS 89-107

The Undersigned, pursuant to section 31 of MSRB rule G-35, hereby state as follows:

CASE SUMMARY

Claimant alleges federal and state securities fraud, breach of fiduciary duty, negligence, breach of contract, fraud, and negligent supervision by Respondent, in connection with the sale to Claimant in January 1986 of \$95,000 Brevard County, Florida, Industrial Development Revenue Bonds, Series 1985, (Titusville Senior Citizen Retirement Service Center Project) ("the Bonds"), which went into default approximately two years later. Claimant alleges, among other things, that in late 1985 she opened a special account with Respondent to hold proceeds she had received from the sale of certain property, and that it was discussed and always understood between Claimant and Respondent's representative that the funds in the special account would have to be reinvested in like-kind property within six months to avoid Claimant having to pay capital gains taxes on the proceeds. Claimant alleges that Respondent's representative recommended the purchase of the Bonds for Claimant's special account, and that Respondent and Respondent's representative made certain misrepresentations and omissions of material facts about the Bonds to Claimant, including that the Bonds were a suitable investment for Claimant. Claimant also alleges that by March, 1986, she had identified certain real estate properties in which to invest the funds in her special account in order to avoid adverse tax consequences, and she requested certain funds from the special account in order to purchase these properties. Claimant further alleges that, without her knowledge or consent, Respondent and Respondent's representative transferred the Bonds from her special account to her regular account at Respondent, transferred various securities from her regular account into the special account, sold the latter securities and used the proceeds from these sales to cover Claimant's draws upon the special account.

Respondent generally denies Claimant's allegations. Respondent argues, among other things, that Claimant is a wealthy investor who knowingly controlled her two accounts at Respondent and, through them, the purchase and retention of the Bonds. Respondent also argues that Respondent and Respondent's representative were in no way responsible for Claimant's tax arrangements or required to give her tax advice, and that proper disclosure concerning the Bonds was made orally by Respondent's representative and by a written official statement, when the bonds were sold. Respondent further argues that there was no unauthorized transfer of the Bonds or other securities between Claimant's accounts in March, 1986. Respondent maintains that Claimant and her tax advisor controlled her special account and would have known immediately if any improper transfers had been made. Respondent contends that Claimant's claim is barred by applicable statutes of limitations and the principles of laches, waiver and estoppel, and that her alleged damages are speculative and excessive and barred in whole or in part by her failure to mitigate damages.

RELIEF REQUESTED

Claimant proposes three alternatives for calculating her compensatory damages: benefit of the bargain (\$109,631); rescission of the purchase of the Bonds (\$109,101); or, rescission of all transactions (\$99,592). Claimant also seeks punitive damages, her costs and attorney's fees.

Respondent requests that the claim be dismissed in its entirety, with costs.

AWARD

On November 19-20, 1990, in Atlanta, Georgia, the undersigned arbitrators heard the controversy between the parties set forth in submissions to the arbitrators signed by Claimant on December 1, 1989 (filed with the MSRB on December 15, 1989) and by Respondent on March 2, 1990. The arbitration panel, having considered the pleadings, the testimony and the evidence presented at the hearing, has determined, in full and final resolution of the issues submitted for determination, that:

1. If Claimant still has possession of the Bonds, Claimant shall deliver the Bonds to Respondent.

2. Respondent shall pay to Claimant compensatory damages of \$68,845, plus costs of \$1,406.97, for a total award of \$70,251.97.
3. No punitive damages shall be awarded.
4. Except as set forth above, the parties shall bear their respective costs and attorney's fees.
5. Pursuant to MSRB rule A-16(2), Claimant's \$750 arbitration deposit shall be retained by the MSRB as forum fees, and Respondent shall pay to the MSRB \$750 as forum fees.
6. Pursuant to section 20(b) of MSRB rule G-35, Respondent's \$100 adjournment fee shall be retained by the MSRB.

Public Arbitrator

Public Arbitrator

Industry Arbitrator

Dated: 12/19/90

STATE OF
COUNTY OF

Michigan
Wayne

ss.:

On this *10th* day of *December*, 19 *90*, before me personally appeared _____ to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Lynn M. Bauer
Wayne County, MI
Commission: 18-1493

STATE OF
COUNTY OF

New Jersey
Hoboken

ss.:

On this *17th* day of *Dec.*, 19 *90*, before me personally appeared _____ to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Hazel D. Myers

HAZEL D. MYERS
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES 2/26/95

ss.:

STATE OF
COUNTY OF

Georgia
Clayton

On this *19th* day of *Dec*, 19 *90*, before me personally appeared _____ to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Judy G. Lake

JUDY G. LAKE
Notary Public, Clayton County, Georgia
My Commission Expires May 19, 1992



RECEIVED

JAN 18 1991

FILED

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v. :
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SMITH BARNEY, HARRIS UPHAM & CO., INC. :
:
Respondent. :

CLARIFICATION
of AWARD

MS 89-107

The Undersigned, as the arbitrator panel appointed to decide the above captioned controversy, having reviewed and considered correspondence from Respondent seeking clarification, modification or reconsideration of the award rendered in this matter and correspondence from Claimant in response to same, has determined to clarify the award as follows:

As of the date of the award, Respondent is entitled to the Bonds and all rights to the Bonds as of that date and Claimant is entitled to the sum of \$70,251.97.


Jeffrey M. Bauer, Esq.


Edwin P. Brooks


Michael Brown

Dated: 1/17/91