

**Award**  
**NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Betty J. Trask, Claimant v. John C. McCormick, Round Hill Securities, Inc., PIM Financial Service, Inc., and Royal Alliance Associates, Inc., Respondents

Case Number: 03-03953

Hearing Site: Portland, Oregon

---

Nature of Dispute: Customer v. Associated Person and Members

**REPRESENTATION OF PARTIES**

For Claimant:

David J. Sweeney, Esq.  
Brownstein, Rask, Sweeney, Kerr,  
Grim, DeSylvia & Hay LLP  
Portland, Oregon

For Respondents John C. McCormick  
and PIM Financial Services Inc.:

Charles J. Murray, Esq.  
Lewis, Brisbois Bisgaard & Smith  
San Francisco, California

For Respondent Round Hill Securities, Inc.  
and John C. McCormick:

Andrew M. Zak, Esq.  
Munro and Zak  
Troy, Michigan

For Respondent Royal Alliance Associates, Inc.:

Gregory M. Curley, Esq.  
Royal Alliance Associates, Inc.  
New York, New York

**CASE INFORMATION**

Statement of Claim filed: May 29, 2003

Claimant's Uniform Submission Agreement signed: May 13, 2003

Joint Statement of Answer filed by Respondents John C. McCormick and Round Hill Securities, Inc.: August 5, 2003

Statement of Answer filed by Respondent John C. McCormick: August 14, 2003

Statement of Answer filed by Respondent PIM Financial Services, Inc.: August 14, 2003

Respondent John C. McCormick's Uniform Submission Agreement: None filed.

Respondent Round Hill Securities, Inc.'s Uniform Submission Agreement signed:  
September 2, 2003

Respondent PIM Financial Services, Inc.'s Uniform Submission Agreement signed:  
September 8, 2003

Respondent Royal Alliance Associates, Inc.'s Uniform Submission Agreement:  
None filed

### **CASE SUMMARY**

In her Statement of Claim, Claimant alleged breach of fiduciary duty, churning and unsuitability involving the purchase of unspecified "high tech" and low priced equities.

Respondents John C. McCormick, PIM Financial Securities, Inc. and Round Hill Securities, Inc. denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the sum of \$300,000.00, interest and costs, including attorney's fees.

Respondents John C. McCormick, PIM Financial Securities, Inc. and Round Hill Securities, Inc. requested dismissal of the Claimant's Statement of Claim in its entirety. In addition, Respondents John C. McCormick and Round Hill Securities, Inc. requested costs, including attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On or about July 31, 2003, Respondent Royal Alliance Associates, Inc. filed a Motion to Dismiss Claimant's Statement of Claim against Respondent Royal Alliance Associates, Inc. On or about May 19, 2004, Claimant dismissed her Statement of Claim against Respondent Royal Alliance Associates, Inc.

Respondent John C. McCormick did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Respondent Royal Alliance Associates, Inc. did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, is bound by the determination of the Panel on all issues submitted.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **FINDINGS AND CONCLUSIONS**

The Panel unanimously finds that the Claimant was at all material times relevant to her claim, an unsophisticated investor who was a widow in her early to mid-seventies. Following the death of her husband in 1993, Claimant established a working relationship regarding her investment accounts with Respondent, John C. McCormick (hereinafter referred to as "McCormick"), who was at the time an account representative for Prudential Securities. He subsequently transferred to Dain Bosworth. McCormick was employed by Respondent PIM Financial Services, Inc. (hereinafter referred to as "PIM") from approximately July, 2000 through March, 2002. McCormick was employed by Respondent, Round Hill Securities, Inc. (hereinafter referred to as "Round Hill"), from approximately March, 2002 through September, 2002. The above two Respondent entities, PIM and Round Hill, are not and were not related in any way during the time period relevant to this claim.

During the approximate nine year period that McCormick managed Claimant's investment accounts, Claimant consistently followed the recommendations of McCormick and permitted Respondent McCormick to purchase and sell securities without first obtaining her permission. While Respondent McCormick was employed by Respondents PIM and Round Hill, he purchased securities on behalf of the Claimant that were unsuitable, and, as a consequence of such unsuitability, Claimant suffered losses.

Respondents, McCormick, PIM and Round Hill, were negligent in failing to advise Claimant of the volatility and risks of certain recommended securities that were not consistent with her investment objectives or suitable for her and her accounts. As a consequence of that negligence, the Claimant suffered damages in the amount of \$136,440.00. During the period that Respondent McCormick was employed by Respondent Round Hill, \$51,640.00 in losses was incurred. During the time that Respondent McCormick was employed to Respondent PIM, \$84,000.00 of the losses was incurred.

**AWARD**

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

- 1) Respondents John C. McCormick and PIM Financial Services, Inc. are jointly and severally liable and shall pay to Claimant compensatory damages in the sum of \$84,000.00.
- 2) Respondents John C. McCormick and PIM Financial Services, Inc. are jointly and severally liable and shall pay to Claimant interest on the sum of \$84,000.00 at a rate of 9% per annum from the date of service of this award until paid in full.
- 3) Respondents John C. McCormick and Round Hill Securities, Inc. are jointly and severally liable and shall pay to Claimant compensatory damages in the sum of \$51,640.00.
- 4) Respondents John C. McCormick and Round Hill securities, Inc. are jointly and severally liable and shall pay to Claimant interest at a rate of 9% per annum on the sum of \$51,640.00 from the date of the service of this award until paid in full.
- 5) Respondents John C. McCormick, PIM Financial Services, Inc. and Round Hill Securities, Inc. are jointly and severally liable and shall pay to Claimant attorney's fees in the sum of \$22,500.00 pursuant to Oregon Statute ORS 59.115.
- 6) Claimant's request for pre-judgment interest is denied.
- 7) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 8) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
--------------------------	-------------

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Round Hill Securities, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 2,750.00
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

The member firm PIM Financial Services, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 2,750.00
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

The member firm Royal Alliance Associates, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 2,750.00
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

**Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences: November 20, 2003	1 session
February 10, 2004	1 session
(4) Hearing sessions @ \$1,125.00/session	= \$4,500.00
Hearings: June 9, 2004	2 sessions
June 10, 2004	2 sessions
<b>Total Forum Fees</b>	<b>= \$6,750.00</b>

The Panel assessed \$6,750.00 of the forum fees jointly and severally to Respondents John C. McCormick, Round Hill Securities, Inc. and PIM Financial Services, Inc.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Less payments	= \$(1,425.00)
<b>Refund Due Claimant</b>	<b>= \$ (1,125.00)</b>
2. Respondent Round Hill Securities, Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Less payments	= \$(5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>
3. Respondent Royal Alliance Associates, Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Less payments	= \$ (5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>
4. Respondent PIM Financial Services, Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 5,200.00</b>

5. Respondents John C. McCormick, Round Hill Securities, Inc. and PIM Financial Services, Inc. are jointly and severally charged with the following fees and costs:

<u>Forum Fees</u>	<u>=\$ 6,750.00</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>=\$ 6,750.00</b>

All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

William P. Bergsten, Esq.	-	Public Arbitrator, Presiding Chair
Michael J. Esler, Esq.	-	Public Arbitrator
Joseph L. Mangan	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
William P. Bergsten, Esq.  
Chair, Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
*Michael J. Esler*  
Michael J. Esler, Esq.  
Public Arbitrator

\_\_\_\_\_  
*6/24/04*  
Signature Date

\_\_\_\_\_  
Joseph L. Mangan  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
*6/25/04*  
Date of Service



**ARBITRATION PANEL**

William P. Bergsten, Esq.	-	Public Arbitrator, Presiding Chair
Michael J. Esler, Esq.	-	Public Arbitrator
Joseph L. Mangan	-	Non-Public Arbitrator

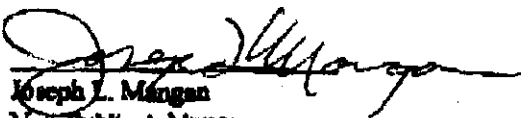
**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
William P. Bergsten, Esq.  
Chair, Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Michael J. Esler, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Joseph L. Mangan  
Non-Public Arbitrator

6-24-04  
\_\_\_\_\_  
Signature Date

6/25/04  
\_\_\_\_\_  
Date of Service

**ARBITRATION PANEL**

William P. Bergsten, Esq.	-	Public Arbitrator, Presiding Chair
Michael J. Esler, Esq.	-	Public Arbitrator
Joseph L. Mangan	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
William P. Bergsten, Esq.  
Chair, Public Arbitrator

6-29-04  
Signature Date

\_\_\_\_\_  
Michael J. Esler, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Joseph L. Mangan  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

6/29/04  
Date of Service