

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
Suite 1680  
Three First National Plaza  
Chicago, IL 60602  
(312) 899-4440

In the Matter of the Arbitration Between

Name of Claimant(s)

James A. and LaVonne Shirley Nelson

88-03324

Name of Respondent(s)

Smith Barney Harris Upham & Co., Inc.  
Gary Heller

**CASE SUMMARY**

James A. Nelson and LaVonne Shirley Nelson ("Claimants") alleged that Gary Heller a registered representative of Smith Barney, Harris Upham & Co., Inc. (Heller and Smith Barney are collectively referred to herein as "Respondents") purchased so S & P Index Options in their account without their authorization. Claimants further alleged that the Respondents 1) Violated various self regulatory rules, article 581-33 (A) (2) of the Texas Act, Deceptive Trade Practices Act and their fiduciary duty, 2) breached their agreement with Claimants, and 3) engaged in common law fraud.

Respondents in answer denied the claim alleging that 1) the index option trade was authorized, 2) the Claimant's claims are barred by Texas Business & Commerce Code 28.319 (3) and the doctrines of ratification, estoppel, statute of limitations, and failure to mitigate.

**RELIEF REQUESTED**

Claimant requested actual damages for \$19,939.50, treble damages, exemplary damages for \$60,000, attorneys' fees, costs, and pre and post judgment interest. Respondents requested that the claim of the Claimants be dismissed and that Smith Barney be awarded its attorneys' fees and costs.

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**AWARD**

On September 6, 1990 in Dallas, Texas during a hearing lasting a total of sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on October 11, 1988 by Claimants James A. and LaVonne Shirley Nelson on January 31, 1989 by Paul K. Barenholtz on behalf of Respondent Smith Barney, Harris Upham & Co., Inc. on January 18, 1989 by Respondent Gary Heller.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted by the Claimant against the Respondents are hereby dismissed.
2. The counterclaims asserted by the Respondents against the Claimants are hereby dismissed.
3. The parties shall bear their own costs including attorneys' fees.
4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$400.00 previously deposited with the NASD by the claimant and the Claimants shall pay additional \$350.00 to the NASD as forum fees. The Respondents are jointly and severally liable for and shall pay to the NASD \$750.00 as forum fees.

By the Panel

Dated:	September 7, 1990	/S/ Jonathan A. Pace, Esq.
Dated:	September 7, 1990	/S/ William N. Hayes
Dated:	September 7, 1990	/S/ Gerard McEvoy, CPA