

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

John O'Malley  
Joetta O'Malley

Claimants

vs.

Smith Barney Harris Upham & Co., Inc.  
Erwin (Skip) Moosher  
William Olson

Respondents -

CASE #89-00161  
AWARD

CASE SUMMARY

Claimants John and Joetta O'Malley alleged Respondents recklessly rendered investment advice and failed to follow the Claimants' investment objectives and recommended and executed option trades which were unsuitable for Claimants' needs. Claimants further alleged the Respondents failed to timely and properly execute option trades in accordance with the Claimants' orders and further alleged the Respondents executed unauthorized option trades in Claimants' account. Respondents maintained that Erwin Moosher met with John O'Malley on a regular basis and worked closely with him to meet Claimants' financial objectives and Respondent William Olson never made any unauthorized trades in Claimants' account and was in frequent contact with Claimants to discuss trades and strategy. Respondents further maintained they always executed orders in accordance with Claimants' instructions and that Respondent William Olson did not have discretion nor entered a trade without a firm order. Respondents further maintained Claimants approved and ratified all the transactions complained of and assumed the risk of the transactions complained of.

RELIEF REQUESTED

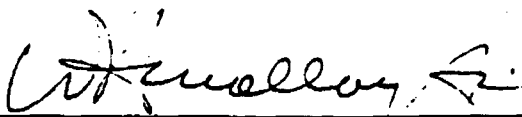
Claimants requested damages of \$99,377.68 plus interest, costs and attorneys' fees. Respondents requested dismissal of claim and that costs be assessed against the Claimants.

AWARD


On November 14, 1989 and November 15, 1989 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants John and Joetta O'Malley on January 13, 1989 and by Respondent Smith Barney Harris Upham & Co., Inc. on April 11, 1989 and by Respondent Erwin Moosher on May 5, 1989 and by Respondent William Olson on August 18, 1989. The hearing was held at the offices of the National Association of Securities Dealers, Inc. located in Washington, DC and consisted of five (5) hearing sessions. 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 as follows:

1. Claims against Respondent Smith Barney Harris Upham & Co., Inc. be and hereby are dismissed in their entirety.
2. Claims against Respondent Erwin (Skip) Moosher be and hereby are dismissed in their entirety.
3. Claims against Respondent William Olson be and hereby are dismissed in their entirety.
4. The parties shall each bear their respective costs including attorney's fees.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$500.00 filing fee previously deposited by the Claimants, and Claimants be and hereby are jointly and severally liable and shall pay to the National Association of Securities Dealers, Inc. the sum of Five Hundred Dollars and No Cents (\$500.00), and Respondent Smith Barney Harris Upham & Co., Inc. be and hereby is liable and shall pay to the National Association of Securities Dealers, Inc. the sum of One Thousand Five Hundred Dollars and No Cents (\$1,500.00), as costs of the five (5) hearing sessions conducted in this matter. All checks should be made payable to the National Association of Securities Dealers, Inc.

ARBITRATORS CONCURRING

  
William H. Malloy, Jr.

  
Marshall Passman

  
David A. Lefevre

DATED: December 8<sup>th</sup>, 1989