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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

James L. Busby

89-00399

Name of Respondent(s)

Smith Barney Harris Upham & Co., Inc.
Thomas Busby

CASE SUMMARY

Claimant James L. Busby alleged that Respondents Smith Barney, Harris Upham and Co., Inc. and Thomas Busby committed acts of fraud, breached fiduciary duties, committed acts of negligence, and improperly supervised their agents. Claimant James Busby further alleged that Respondents improperly and wrongfully liquidated the Claimant's account and forced him to sell shares of his QMS stock. Respondent Smith Barney, Harris Upham and Co., Inc. maintained that the Claimant was a wealthy and sophisticated investor who chose to engage in aggressive and speculative trading in commodities and options. Smith Barney further maintained that the Claimant approved and ratified all of the transactions in his account, and by written agreement, the Claimant gave Smith Barney the authorization to take whatever action it deemed appropriate with respect to margin calls or liquidations. Respondent Thomas Busby maintained that he made no misrepresentations to the Claimant and followed the policies and practices of Smith Barney at all times in handling the Claimant's account. Respondent Thomas Busby also maintained that the decision to order James Busby to liquidate his account was made by Smith Barney and not himself which he alleged put James Busby's account at risk and jeopardized Thomas Busby's good will and reputation.

RELIEF REQUESTED

Claimant James Busby requested \$9,903,753 in actual damages, \$3,565,363 in pre-judgment interest, \$582,612 in attorneys fees and all expenses of

entirety.

(6) All claims for punitive damages be and hereby are denied.

(7) All claims for attorneys fees be and hereby are denied.

(8) In addition, Claimant James L. Busby is liable and shall pay to Respondent Smith Barney, Harris Upham and Co., Inc. the sum of One Thousand One Hundred Fifty Seven Dollars and Eighty Eight Cents (\$1,157.88) in costs. All other requests for costs are denied.

(9) Pursuant to Section 43 of the Code of Arbitration Procedure, the \$1,000.00 filing fee previously deposited by the Claimant James L. Busby shall be retained by the NASD, Inc. Claimant James L. Busby is hereby assessed \$13,500.00 in forum fees. Respondent Smith Barney, Harris Upham and Co., Inc. is hereby assessed \$6,750.00 in forum fees. Respondent Thomas Busby is hereby assessed \$6,750.00 in forum fees. All forum fees are to be made payable to the NASD, Inc. by the parties and are assessed as costs for 27 of the 43 hearing sessions conducted in this matter.

Concurring Arbitrators

A. Keith Logue, Esq.

Dated: 10/30/90