

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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IN THE MATTER OF THE ARBITRATION BETWEEN :  
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Robert J. Smyth :  
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 : Claimant : Case #89-01110  
 :  
vs. : AWARD  
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Sherwood Capital, Inc., J.T. Moran & Co., :  
Inc. and Scott Toohey :  
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 : Respondents :  
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CASE SUMMARY

Claimant Robert J. Smyth ("Smyth") alleged that the Respondent Scott Toohey ("Toohey"), a former employee of Respondent Sherwood Capital, Inc. ("Sherwood") and Respondent J.T. Moran & Co., Inc. ("J.T. Moran"), misrepresented the quality of the stocks recommended to the Claimant and failed to properly explain the risks involved with these investments. The Claimant also alleged that Respondent Toohey promised that the Claimant's investments would always increase in value, and would often mislead the Claimant as to the value of his investments. Lastly, he held both brokerage firms responsible for the conduct of their broker.

Respondent Sherwood contended that the Claimant authorized the execution of all transactions in his accounts, with full knowledge of the risks involved. Respondent Sherwood also contended that the losses sustained by the Claimant were the result of risks inherent in the market and that it should not be held liable for the losses sustained. Respondents J.T. Moran and Toohey alleged that the Claimant sought large gains from high risk securities, that he authorized all transactions with full knowledge of the risks involved, and that Respondent Toohey carefully researched all recommendations made to the Claimant. Respondent J.T. Moran also contended that all transactions complained of were executed by Sherwood not J.T. Moran, and, thus, J.T. Moran is not liable therefor.

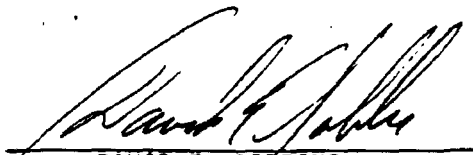
AWARD

On March 14, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Robert J. Smyth on April 24, 1989, by Respondent Sherwood Capital, Inc. on July 14, 1989, by Respondent J.T. Moran & Co., Inc. on June 22, 1989, and by Respondent Scott Toohey on September 5, 1989. The hearing was conducted at the offices of the National Association of Securities Dealers, Inc. in New York City, New York and consisted of two (2) hearing sessions.

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

1. Pursuant to an Order of the U.S. Bankruptcy Court, all actions have been stayed against Respondent J.T. Moran & Co., Inc. However, if the stay is lifted the Claimant may pursue this action against J.T. Moran pursuant to applicable law. This matter will proceed in J.T. Moran's absence without prejudice to the Claimant.
2. All claims against Respondent Sherwood Capital, Inc. be and hereby are dismissed in their entirety.
3. All claims against Respondent Scott Toohey 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 Claimant, and Respondent Sherwood Capital, Inc. be and hereby is liable and shall pay to the National Association of Securities Dealers, Inc. the sum of Five Hundred Dollars and No Cents (\$500.00), as costs of the two (2) hearing sessions conducted in this matter.

CONCURRING ARBITRATORS

  
DAVID E. ROBBINS

  
RICHARD A. LORDON

  
THEODORE KIMELMAN