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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimants

Richard W. Marr

Judy Marr

Phyllis G. Marr Family Trust

NASD Arbitration

No. 90-00315

Name of Respondents

Smith Barney Harris Upham & Co. Inc.

Robert Reynolds

Edward D. Jones & Co.

Clinton H. Bellows

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REPRESENTATION

For Claimants: Jerome E. LaBarre, Esq. - LaBarre & Associates, P.C. - Portland Oregon

For Respondents: Paul K. Barenholtz, Esq. - Smith Barney Shearson - New York, New York

CASE INFORMATION

Statement of Claim filed: January 30, 1990

Amended Statement of Claim filed: December 10, 1993

Claimants' Submission Agreement signed: March 26, 1990

Joint Statement of Answer and Counter-Claim filed by Respondents: May 16, 1990

Submission Agreement signed by Respondent, Smith Barney, Harris Upham & Co. Inc. on May 14, 1990

HEARING INFORMATION

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Hearing Dates / Sessions: Pre-Hearing Conference - October 6, 1994 - One Session  
October 11, 1994 - Two Sessions  
October 12, 1994 - Two Sessions  
October 13, 1994 - Two Sessions

Hearing Location: Portland, Oregon

### CASE SUMMARY

Claimant, Richard and Judy Marr and the Phyllis G. Marr Family Fund Trust (Marr) brought this claim against Respondents, Smith Barney Harris Upham & Co.(SBHU), and Robert Reynolds (Reynolds).

By said Claimant and an amendment thereto, Marr alleged that the Respondent, Reynolds, while employed by SBHU, sold conservative investments in the Marr accounts and replaced them with high risk vehicles which included limited partnerships. Said investments were unsuitable for the Marrs in light of their investment objectives which were preservation of capital and moderate income generation.

Respondents alleged that the claims were ineligible under Section 15 of the NASD Code of Arbitration Procedure and barred by state and federal statutes. Respondents also alleged that the investments were suitable for the Marrs and that they were given all prospectuses relating to their investments and knew the risk undertake for the enhancement of income received. Respondents also assert that the Marrs had previously made high- risk investments and that all risks relating to the claim were knowingly taken by them.

### RELIEF REQUESTED

Claimants seek to recover damages according to proof , estimated to be not less than \$350,000.00, punitive damages, cost, fees and attorneys' fees.

Respondents seek dismissal of the claim in its entirety and counterclaim to recover payment of a coupon on bonds that the Marrs no longer owned when the payment was made.

### OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

On October 6, 1994, a pre-hearing conference was held with all parties and panelists present by telephone. Said pre-hearing addressed a Motion to Dismiss and a Motion to Bar Claimants'

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Amended Statement of Claim for untimeliness.

The panel reviewed submissions and heard oral arguments relating to the above. Claimants' Motion to Amend their statement of claim was denied. Respondents' Motion to Dismiss was denied. However, the panel determined that the parties could re-raise both issues at the hearing. Prior to the hearing, all claims against Respondents, Edward D. Jones & Co. and Clinton H. Bellows were dismissed by claimants, with prejudice.

#### AWARD

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

1. The Panel determined that none of Claimants claims are barred by Section 15 of the NASD Code of Arbitration Procedure.
2. The Panel determined that all of the exhibits offered by the parties are admitted into evidence.
3. The Panel allowed Claimants' Motion to Amend their Statement of Claim.
4. The panel determined that Respondents were negligent in recommending to Claimants that Claimants allocate such a high percentage of their investable assets into the Red Lion securities and that such claim for such negligence is not barred by the applicable statutes of limitations.
5. After considering the appropriate percentage of investable assets that Respondent should have recommended to Claimants, the issue of Claimants' comparative negligence, and the issue of pre-judgment interest, the Panel determined that Claimants be jointly and severally awarded damages in the sum of \$16,000.00 plus post-judgment interest at the Oregon legal rate. Respondents, Smith Barney and Robert Reynolds are jointly and severally liable for the payment of said sum.
6. Claimants' claim for punitive and other damages is denied.
7. Respondents' counter-claim is dismissed.
8. The parties shall each bear their respective costs and fees, including attorneys' fees.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure,

No additional forum fees were assessed.

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ARBITRATORS

Name ..... Public / Industry

Robert McGaughey  
Gordon MacMillan  
Theodore King

Public Arbitrator  
Public Arbitrator  
Industry Arbitrator

Concurring Arbitrators' Signatures

  
Robert McGaughey

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Gordon MacMillan

\_\_\_\_\_  
Theodore King

Date Served: 11-10-94

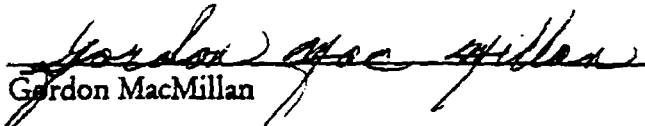
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ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Robert McGaughey	Public Arbitrator
Gordon MacMillan	Public Arbitrator
Theodore King	Industry Arbitrator

Concurring Arbitrators' Signatures

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Robert McGaughey

  
Gordon MacMillan

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Theodore King

Date Served: 11-18-94

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ARBITRATORS

Name ..... Public / Industry

Robert McGaughey

Public Arbitrator

Gordon MacMillan

Public Arbitrator


Theodore King

Industry Arbitrator

Concurring Arbitrators' Signatures

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Theodore King

Date Served: 11-10-94