

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Margaret O. Galbraith

90-00331

Name of Respondents

Rondell Eugene Loftin  
Sidney Earl Richmond  
Douglas Shivers  
Gary Wayne Chambers  
Joseph P. Hill  
Suzanne Whitfield Gates  
Donald Ray Gates  
Sheri Glover

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REPRESENTATION OF PARTIES

Margaret O. Galbraith was represented by Harvey L. Ball, Esq., of Ball, Bitheimer & Associates, P.A., Little Rock, AR.

Rondell Eugene Loftin, Sidney Earle Richmond and Douglas E. Shivers appeared pro se.

Gary Wayne Chambers was represented by Richard C. Downing, Esq., Little Rock, AR.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about January 31, 1990, Margaret O. Galbraith ("Claimant") alleged Rondell Eugene Loftin, Sidney Earle Richmond, Douglas F. Shivers, Gary Wayne Chambers, John E. Shivers, Joseph P. Hill, Suzanne Whitfield Gates, Donald Ray Gates, Shari Glover, and Mark B. Yarbrough employees or control persons of United Securities Associates, Inc. and/or U.S. Associates, Inc. (collectively as "Respondents") violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10(b)5 promulgated thereunder, made unsuitable recommendations in violation of the NASD Rules of Fair Practice, engaged in misstatements and omissions of material facts which constitute common law fraud, negligence and violations of the Arkansas Securities Act, breach of contract and violation of the Racketeer Influenced and Corrupt Organizations Act (RICO). Claimant specifically alleged that Donald Gregory an employee of U.S. Associates, Inc. made misstatements and omitted to state material facts, made unsuitable recommendations to Richard Galbraith to induce him to invest in FNMA I/O #7 securities.

In their Joint Answer, Counterclaim and Third Party Claim against Richard Galbraith, Barbara Galbraith and Donald Gregory, Respondents Rondell Eugene Loftin, Sidney Earle Richmond, Jr., Douglas E. Shivers, and Joseph P. Hill denied the allegations set forth in the Statement of Claim. Respondents Loftin, Richmond, Shivers and Hill specifically stated that the new account form indicated that the account was opened by Richard Galbraith who was known by Third Party Respondent Don H. Gregory. Respondents also stated that there was no indication on the new account form or any other forms available to them that Richard Galbraith was investing funds for Margaret O. Galbraith or anyone other than Richard Galbraith. Respondents in their Third Party Claim allege that Richard Galbraith, Barbara Galbraith and Donald Gregory made material misrepresentations which serve as the basis for this arbitration.

In his Answer and Counterclaim filed with the NASD on or about April 29, 1991, Respondent Gary Wayne Chambers denied the allegations set forth in the Statement of Claim. Respondent Gary Wayne Chambers specifically stated that he was not associated in any capacity with U.S. Associates, Inc. or United Securities Associates, Inc. at the time the account at issue was opened or at the time of the purchase at issue.

In their Answer to the Third Party Claim, filed with the NASD on or about September 20, 1990, Third Party Respondents Richard and Barbara Galbraith denied the allegations set forth in the Third Party Claim.

#### OTHER ISSUES

Respondent Gary Wayne Chambers presented a motion to dismiss the claims against him. After hearing the arguments presented on behalf of the Claimant and Mr. Chambers the panel took the matter under advisement and heard the evidence presented by the parties. After considering the arguments of the parties and the evidence presented the panel has denied the motion to dismiss presented on behalf of Gary Wayne Chambers.

Respondents U.S. Associates, Inc., United Securities Associates, Inc., Mark Yarbrough, John E. Shivers, and Sheri Glover have filed for bankruptcy and therefore they have been dismissed without prejudice.

Respondents Suzanne Whitfield Gates and Donald Ray Gates have been dismissed with prejudice by agreement of Claimant.

#### RELIEF REQUESTED

Claimant requested an award in the amount of \$102,468.61, pre and post judgement interest and attorney's fees, punitive damages in the amount of \$870,983.18, and RICO damages in the total amount of \$307,405.83. Claimant also requested the return of margin interest, mark-ups and commissions paid. Claimant further requested that the counterclaim asserted herein be dismissed.

Respondents requested that the arbitrators find for the Respondents and against Claimant. Respondents also requested that they be awarded punitive

damages, costs and attorneys fees.

Third Party Respondents Richard and Barbara Galbraith requested that the Third Party Claim asserted herein be dismissed.

#### PROCEDURAL MATTERS

On Tuesday, September 24, 1991 in Little Rock, Arkansas during a hearing lasting a total of three (3) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Richard Galbraith on behalf of Claimant Margaret O. Galbraith on April 23, 1991 by Respondent Gary Wayne Chambers and on April 8, 1991 by Sidney Earl Richmond.

Respondents Rondell Eugene Loftin, Douglas Shivers and Joseph P. Hill did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedures and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted. Respondents Rondell Eugene Loftin, Douglas Shivers and Joseph P. Hill agreed at the hearing to execute submission agreements.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award maybe entered. In either case, the parties have agreed to received conformed copies of the award while the original(s) remain on file with the NASD.

#### AWARD

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

1. The Statement of Claim asserted in this matter shall be and hereby is dismissed and denied in its entirety. The panel in reaching this determination feels that Margaret O. Galbraith was not the proper party to bring the claims asserted. There was no evidence presented at the hearing to establish that Richard Galbraith had in fact been granted power of attorney by Margaret O. Galbraith at the time the investments were made or that the Respondents named in this matter knew or should have known that the assets in the account belonged to Margaret O. Galbraith. In addition, the undersigned arbitrators find that no additional evidence was presented to establish that the respondents named herein had knowledge or information outside of the account documents which indicated that the funds in the account in question belonged to Margaret O. Galbraith; and not Richard Galbraith.
2. All counterclaims asserted in this matter shall be and hereby are dismissed and denied in their entirety;
3. The Third Party Claims asserted in this matter shall be and hereby

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are dismissed and denied in their entirety;

4. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter; and
5. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the nonrefundable filing fee in the amount of \$250.00 and shall refund the hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimant. Respondents Rondall E. Loftin, Sidney Baris Richmond and Joseph P. Hill shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$3,000.00 as forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

DATED:

10-22-91



W. Bradford Sherman, Esq.  
Presiding Chair

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Petrick A. Burrow, Esq.  
Public Arbitrator

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Robert L. Lanford  
Industry Arbitrator

20-331

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5. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the nonrefundable filing fee in the amount of \$250.00 and shall refund the hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimant. Respondents Randall E. Loftin, Sidney Earle Richmond and Joseph P. Hill shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$3,000.00 as forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

(DATE):

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W. Bradford Sherman, Esq.  
Presiding Chair

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*Patrick A. Burrow*  
Patrick A. Burrow, Esq.  
Public Arbitrator

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DATED:

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Presiding Chair

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Patrick A. Burrow, Esq.  
Public Arbitrator

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Robert L. Lamford  
Industry Arbitrator

10-23-91