

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Terry & Joyce Kirk individually  
and as Trustees

Claimants

vs.

Black and Co, Inc. and  
L. William Tate

Respondents

AWARD

NASD #90-01084

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on April 16, 1990. Claimants alleged that Respondents exercised discretionary power and control over Claimants' account without first obtaining written authorization; that Respondents churned Claimants' accounts by engaging in transactions that were excessive, inappropriate, and unsuitable in size and frequency in view of the financial resources and character of the accounts and investment objectives; that Respondents engaged in transactions without authorization; and that Respondents failed to supervise and maintain Claimants' accounts.

Respondents denied the allegations and maintained that Claimants were knowledgeable and experienced investors that pursued a strategy in arbitrage positions involving the purchase of stocks during the course of buyouts, liquidations, or reorganizations; that each transaction was discussed with and approved by Claimants; that Claimants received confirmation of each transaction promptly and at no time complained that any such transaction had occurred without authorization; and that the accounts were properly supervised.

DAMAGES AND RELIEF REQUESTED

Claimants requested damages of \$159,644.72, margin interest of \$22,623.34, punitive damages of \$2,500,000, prejudgment and postjudgment interest, attorneys' fees and costs.

Respondents requested dismissal of the claim.

### DAMAGES AND RELIEF AWARDED

On March 12 and 13, 1991 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on May 11, 1990 and by Respondents on May 29, 1990.

The hearing was conducted in Portland, Oregon and lasted four (4) 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 as follows:

1. Respondent Black & Company, Inc. is hereby liable for and shall pay to Claimants the sum of Twenty-Five Thousand Dollars and Zero Cents (\$25,000).
2. All claims against Respondent L. William Tate are denied.
3. The parties shall each bear their respective costs including attorneys' fees.
4. In accordance with Section 43 of the NASD Code of Arbitration Procedure:
  - a) the NASD shall retain the \$1,000 filing fee and previously deposited by the Claimants; and
  - b) Respondent Black & Company, Inc. is assessed the sum of \$3,000 representing forum fees to be paid to the NASD directly.

### OTHER ISSUES

The parties stipulated to the execution and service of the award in counterpart copies.

### ARBITRATORS CONCURRING

DATE SERVED: 4/4/91

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Ralph M. Holman

*Gordon MacMillan*  
Gordon MacMillan

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Lee Smith