

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Carson and Sharon Gibb

## Claimants

**vs.**

Rotan Mosle, Inc.

Respondent

**CASE #91-03018**

**AWARD**

### CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 27, 1991, Claimants, Carson and Sharon Gibb, who appeared Pro Se, alleged that on October 13, 1990 Respondent Rotan Mosle, Inc. registered representative, Thomas Hartman solicited them to sell US Air stock short and advised them to place a stop-loss order at 17 3/4, in order to limit their risk. Claimants further alleged that when they agreed to place the short sell order on October 15, 1990, they inquired if there should be a stop-loss order and Respondents' registered representative, Thomas Hartman advised them that "the floor trader would handle things". Claimants contended that they later received a confirmation from Respondent that they had bought 1,000 shares of US Air at 17 3/4 to cover their short sale. Claimants further contended that they never entered into or authorized the stop-loss order and if Respondent had not bought back the 1,000 shares US Air stock they could have broken even, instead of sustaining losses.

Respondent, Rotan Mosle, Inc. by and through their in-house counsel, Joseph F. Generelli, Esq. with PaineWebber, Inc., maintained that Claimants, Carson and Sharon Gibb entered into a verbal agreement with Respondents', registered representative, Thomas Hartman to sell 1,000 shares US Air stock short at \$15.00 per share. Respondent further maintained that Claimants agreed to buy the 1,000 shares US Air stock back at 17 3/4 if the price level went up rather than down, thus limiting Claimants risk. Respondent contended that the price level of US Air unfortunately went against Claimant's short sale and Respondent acted to limit Claimants loss when it reached 17 3/4. Respondent further contended that the stop-loss order was authorized by Claimants and just as Respondent would not share in the gain, neither should Respondent share in Claimant's loss. Respondent asserted that they acted prudently and

in Claimants best interest, therefore, they should not be held liable.

RELIEF REQUESTED

Claimants, Carson and Sharon Gibb requested \$3,392.60 plus reimbursement of the NASD, Inc. filing fee.

Respondent, Rotan Mosle, Inc. requested the claim be dismissed in its entirety and that costs be assessed against Claimants.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, J. Gregory Yawman, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on September 20, 1991 and by the Respondent on November 20, 1991.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimants, Carson and Sharon Gibb against Rotan Mosle, Inc. are dismissed.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Carson and Sharon Gibb shall be retained by the NASD, Inc.

AFFIRMATION

I, J. GREGORY YAWMAN, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



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Signature of Arbitrator

DATE OF DECISION:      March 26, 1992