

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between :

Peter B. Fay :

Claimant :

vs. :

Hambrecht & Quist, Inc. :  
William L. Hiss :

Respondents :  
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PUBLIC

CASE #91-03112  
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 4, 1991, Claimant, Peter B. Fay by and through his counsel, Richard B. Dannenberg, Esq. of Lowey Dannenberg Bemporad & Selinger, P.C., New York, NY, alleged that Respondent William L. Hiss, a registered representative with Respondent, Hambrecht & Quist, Inc., solicited and induced him to purchase a total of 3,000 shares of Oracle Systems Corporation ("Oracle") stock and improperly liquidated his margin account without his knowledge. Claimant further alleged that Respondent, William L. Hiss failed to properly ascertain Claimant's investment objectives and that his primary recommendation to Claimant was the Oracle stock, when he knew it was a highly speculative stock and unsuitable for Claimant's investment history. Claimant contended that Respondent, William L. Hiss continuously recommended the purchase of Oracle common stock at the very same time Claimant's account was subject to a maintenance call. Claimant further contended that although he previously had a margin account with Merrill Lynch, Pierce, Fenner & Smith, Inc., Claimant had no experience in the stock market and lacked a real understanding of margin accounts. Claimant asserted that he was consistently in touch with Respondent, William L. Hiss, although he travelled extensively and unbeknownst to Claimant his account had been liquidated. Claimant further asserted that Respondent, William L. Hiss wrongful conduct in handling his account caused him to incur losses and Respondent, Hambrecht & Quist, Inc. failure to supervise makes them equally liable.

Respondents, Hambrecht & Quist, Inc. and William L. Hiss by and through their in-house counsel Steven N. Machtinger, Esq., maintained that Respondent William L. Hiss recommended the

purchases of Oracle Systems Corporation ("Oracle") and Occupational Urgent Care Health Systems, Inc. ("OUCH") to Claimant, Peter B. Fay. Respondents further maintained that Respondent William L. Hiss ascertained Claimant's investment objectives and investment experience prior to recommending any investments. Respondents contended that Claimant sought out Respondents Hambrecht & Quist, Inc. and William L. Hiss and did so for the specific purpose of engaging in speculative transactions in technology stocks on margin. Respondents further contended that Claimant had engaged in such transactions at Merrill Lynch, Pierce, Fenner & Smith, Inc. and was dissatisfied there, so he contacted Respondents because of their reputation for having focused expertise in technology stocks. Respondents asserted that Claimant informed Respondent William L. Hiss that his positions at Merrill Lynch were not only being maintained on margin but were highly leveraged which proved Claimant's experience in the stock market in addition to, his understanding margin accounts. Respondents further asserted that Claimant was given ample notice that his account would be liquidated if he failed to meet margin requirements, which he did, when he failed to deposit additional funds which resulted in his account being severely undermargined. Respondents argued that it explicitly states in the Margin Account Agreement and Loan Consent signed by Claimant, that Respondent Hambrecht & Quist, Inc. has the right to sell the securities in his account without any notice to him at all. Respondents further maintained that Claimant has never claimed that the equally risky recommendation of "OUCH" was unsuitable and the only difference between these recommendations was that "OUCH" was profitable while the "Oracle" investment was not. Respondents further argued that Claimant is not entitled to any damages since Respondent's conduct was in compliance with all regulatory provisions applicable to such transactions.

#### RELIEF REQUESTED

Claimant, Peter B. Fay requested \$10,000.00 in actual damages plus interest and attorney's fees.

Respondents, Hambrecht & Quist, Inc. and William L. Hiss requested the claim be dismissed with prejudice and they be awarded their costs of defense.

#### AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Thomas C. McNally, III, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on September 21, 1991 and by the Respondents on December 12, 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 Claimant, Peter B. Fay against Respondents, Hambrecht & Quist, Inc. and William L. Hiss are dismissed with prejudice.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Peter B. Fay shall be retained by the NASD, Inc.

AFFIRMATION

I, THOMAS C. McNALLY, III, 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: May 22, 1992