

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Dennis Johnson

and

91-03881

Name of Respondents

Quick & Reilly, Inc., Richard Howell  
and Gerald Duprey

REPRESENTATION OF PARTIES

Claimant was represented by Lloyd S. Clareman, Esq., New York, NY.

Respondents Quick & Reilly, Inc., Richard Howell and Gerald Duprey were represented by Paul F. McCurdy, Esq. of Kelley, Drye and Warren, P.C., Stamford, CT.

CASE INFORMATION

The Statement of Claim was filed on or about December 9, 1991.

Claimant's Submission Agreement signed on November 21, 1991 by Dennis Johnson.

Statement of Answer filed by Respondents Quick & Reilly, Inc., Richard Howell and Gerald Duprey on or about March 4, 1992.

Respondent Quick & Reilly, Inc.'s Submission Agreement signed on January 30, 1992 by Richard L. Bott. Respondent Richard Howell's Submission Agreement signed on January 27, 1992. Respondent Gerald Duprey's Submission Agreement signed on January 27, 1992.

HEARING INFORMATION

The hearing was held on Tuesday, June 23, 1992 for three (3) sessions and Wednesday, June 24, 1992 for three (3) sessions and Thursday, June 25, 1992 for two (2) sessions in Denver, Colorado for a total of eight (8) sessions.

CASE SUMMARY

Claimant alleged that Respondents made irresponsible and unsuitable investment solicitations and recommendations. Claimant further alleged that

Respondents recommended that the Claimant engage in option trading in disregard of the Claimant's personal and financial well being. Claimant alleged that the Respondents violated the NASD Rules of Fair Practice, and Rules of the New York Stock Exchange. Claimant specifically alleged that Respondent Quick & Reilly, Inc. had failed to properly supervise Respondents Howell and Duprey.

Respondents Quick & Reilly, Inc., Richard Howell and Gerald Duprey denied the allegations set forth in the Statement of Claim. Respondents specifically denied that they devised investment strategies for or made recommendations to the Claimant. Respondents stated that the investments in the Claimant's account were consistent with his stated investment objectives. Respondents also asserted the following affirmative defenses: failure to state a cause of action; lack of subject matter jurisdiction; no fiduciary relationship existed; assumption of the risk; comparative negligence; estoppel; waiver and laches.

#### RELIEF REQUESTED

Claimant requested an award in the approximate amount of \$250,000.00, pre-award interest, post-award interest, and unspecified punitive damages.

Respondents requested that the Claimant's request be denied and that they be awarded their costs, expenses and attorney's fees.

#### OTHER ISSUES CONSIDERED & DECIDED

At the conclusion of Claimant's case in chief, Respondents asserted a Motion to Dismiss for failure to meet his burden of proof. The motion was denied.

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(s) remain on file with the NASD.

#### 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. All claims asserted against Respondents Richard Howell and Gerald Duprey shall be and hereby are dismissed in their entirety.
2. Respondent Quick & Reilly, Inc. shall be and hereby is liable for and shall pay to the Claimant Dennis Johnson the total sum of \$212,100.66 (Two hundred twelve thousand one hundred dollars and sixty-six cents). The above sum includes an award in the amount of \$174,224.82 in compensatory damages, expert witness fees in the amount of \$10,000.00, and \$27,875.84 as

interest at the rate of 8% per annum.

3. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant. Claimant shall pay to the NASD the sum of \$2,250.00 and Respondent Quick & Reilly shall pay to the NASD the sum of \$3,000.00 as forum fees.

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference, if any.

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

Dated:

July 20, 1992

s/s James B. Eichberg  
Presiding Chair  
Public Arbitrator

July 18, 1992

s/s Thaddeus J. Tecza, Ph.D  
Public Arbitrator

July 20, 1992

s/s Devra Perch  
Industry Arbitrator

NASD award served on: July 27, 1992