

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

William S. Willis & Julia Willis Spitz

92-00003

Name of Respondents

Smith Barney Harris Upham & Co., Inc.
Ronald H. Reisman

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 2, 1992, Claimants William Scott Willis and Julia Willis Spitz, who appeared Pro Se, alleged that Respondent Smith Barney Harris Upham & Co., Inc. failed to tender 120 shares of Alaska Banc shares that should have been changed to Alaska Bancorporation, and that its failure to do so, caused the Claimants a loss because they were unable to sell the shares. The Claimants further alleged that by the time the transfer was completed, the stock had dropped in value and that although Respondent Ronald H. Reisman offered to resolve this matter, he never replied to their acceptance letter. The Claimants contended that they should be compensated for losses incurred due to the Respondents' negligence.

Respondents Smith Barney, Harris Upham & Company, Inc. and Ronald Reisman, through their in-house counsel, Linda R. Alpert, Esq., maintained that they should not be held liable in this matter and that the Claimants are not entitled to any recovery. The Respondents also maintained that there is no evidence that they should have known about the exchange of Alaska Banc shares for Alaska Bancorporation until the Claimants alerted them, nor is there any evidence that the Claimants gave any sell order to their brokers. The Respondents contended that the Claimants could have sold their stock through any other firm, and they failed to mitigate damages by not doing so.

RELIEF REQUESTED

Claimants William S. Willis & Julia Willis Spitz requested \$507.00 in actual damages.

Respondents Smith Barney, Harris Upham & Co., Inc. and Ronald Reisman requested that the claims of the Claimant be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The Motion to Dismiss pursuant to Section 15 of the NASD Code of Arbitration Procedure filed by Respondents Smith Barney, Harris Upham & Co., Inc. and Ronald Reisman is denied.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Edgar Bellinger, 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 December 27, 1990, by the Respondent Smith Barney, Harris Upham & Co., Inc. on March 20, 1992 and by Respondent Ronald H. Reisman on March 20, 1992.

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. Respondent Smith Barney, Harris Upham & Co., Inc. is liable and shall pay to Claimants William Scott Willis and Julia Willis Spitz \$350.00 in actual damages.
2. The claims of the Claimants against Respondent Ronald Reisman are dismissed in their entirety.
3. The parties shall bear their respective costs.
4. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondent Smith Barney, Harris Upham & Co., Inc. is liable and shall pay \$30.00 to the Claimants as reimbursement of the filing fee.

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AFFIRMATION

I, **EDGAR BELLINGER, 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.



Signature of Arbitrator

DATE OF DECISION: July 20, 1993