

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :
Otis B. Miller, as trustee :
Claimant :
vs. : **CASE #92-00371**
Quick & Reilly, Inc. : **AWARD**
Respondent :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 31, 1992, Claimant Otis B. Miller who appeared Pro Se, alleged that on December 20, 1991, before leaving on a trip to Tucson, Arizona, he requested market quotes for his Gulf States Utilities stock and subsequently, gave explicit instructions to Respondent Quick & Reilly, Inc., by and through their agent, to sell his 2,600 shares of Gulf States Utilities at \$10.00 per share. Claimant further alleged that when he received his mail, he discovered that Respondent's agent sold his Gulf States Utilities shares at the current asking price of \$9 3/4 not the \$10.00, as explicitly instructed. Claimant contended that at no time did Respondent contact him in relation to confirming the transaction and it was not until he received his forwarded mail did he discover Respondent's error. Claimant further contended that Respondent's failure to follow his explicit instructions caused him to sustain losses, therefore, Claimant should be compensated for the difference owed him.

Respondent Quick & Reilly, Inc. by and through their in-house counsel, Joseph Corso, Esq., maintained that at approximately 1:15 p.m. on December 20, 1991, Claimant Otis B. Miller contacted their Tucson office and spoke to registered representative, George Russell to advise him that he wished to sell 2,600 shares of Gulf States Utilities ("GSU"), at which time, Mr. Russell proceeded to follow Respondent's Standard Operating Procedures for Taking Orders. Respondent further maintained that the instructions that Mr. Russell received from Claimant were to sell long 2,600 Gulf States Utilities at 9 3/4, good-till-canceled, all or none, at which time, in compliance with Respondent's Standard Operating Procedure for Taking Orders, Mr. Russell read the order back to Claimant whereby Claimant acknowledged the order to be correct,

therefore the order was entered. Respondent contended that the order was executed at Claimant's limit of 9 3/4 and Mr. Russell contacted the Claimant to report the sale of the shares, and subsequently, on December 23, 1991, a confirmation of the transaction was forwarded to the Claimant. Respondent further contended that if Claimant had intended to sell the stock at \$10.00, he had two occasions when he could have corrected Respondent's representative; at the time, Mr. Russell read back the order and later when Mr. Russell confirmed the order had been executed. Respondent asserted that it wasn't until Claimant received the confirmation on or about December 26, 1991, that he contacted Respondent to discuss the discrepancy, at which time, the price of GSU had risen to a high of 10 1/8. Respondent further asserted that it is unfortunate that Claimant missed the opportunity to sell his stock at a higher price, but Respondent is not liable for this missed opportunity.

RELIEF REQUESTED

Claimant Otis B. Miller requested \$690.00 in actual damages plus expenses.

Respondent Quick & Reilly, Inc. requested the claim be dismissed in its entirety.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Raymond S. Heyman, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 27, 1992 and by the Respondent on March 30, 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. The claim of Claimant Otis B. Miller against Respondent Quick & Reilly, Inc. is dismissed.
2. The parties shall bear their respective costs.
3. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Otis B. Miller shall be retained by the NASD, Inc. Respondent Quick & Reilly, Inc. is liable and shall pay to the

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Claimant Otis B. Miller the sum of \$15.00 as
partial reimbursement.

AFFIRMATION

I, **RAYMOND S. HEYMAN, 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: September 28, 1992