

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Nichols Barrett and Roberta Barrett

93-01284

Name of Respondents

Stephen D. Regan  
Don R. Porter

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**REPRESENTATION**

For Claimants Nicholas and Roberta Barrett ("Claimants"): They appeared pro se.

For Respondents Stephen D. Regan ("Regan") and Don R. Porter ("Porter"): Jonathan P. Dyer, Esq. of the law firm of Nelson Mullins Riley & Scarborough.

**CASE INFORMATION**

Statement of Claim filed: March 16, 1993.

Claimants' Submission Agreement signed on: December 29, 1992.

Joint Statement of Answer filed by Respondents Stephen D. Regan and Don R. Porter on: June 22, 1993.

Respondent Stephen D. Regan's Submission Agreement signed on: June 22, 1993.

Respondent Don R. Porter's Submission Agreement signed on: June 22, 1993.

**HEARING INFORMATION**

|                         |                   |   |             |
|-------------------------|-------------------|---|-------------|
| Pre-Hearing Conference: | January 31, 1994  | - | One Session |
|                         | February 11, 1994 | - | One Session |

|                        |                |   |              |
|------------------------|----------------|---|--------------|
| Hearing Date/Sessions: | March 14, 1994 | - | Two Sessions |
|------------------------|----------------|---|--------------|

Hearing Location: The hearing was held at The Guest Quarters located at 6300 Morrison Blvd., Charlotte, North Carolina, 28211.

### CASE-SUMMARY

Claimants alleged that Respondents mishandled Claimants' account, placing all of their assets in high risk investments and, as a result, excessive amounts of Claimants' total assets were exposed to highly speculative trading without any protective measures, and without Claimants' knowledge. Claimants also alleged that they advised Respondent Regan, their account executive, that Claimants only wanted to invest in low-risk, short-term stocks that would yield a profit gradually on their original investments and that Claimants did not intend to over-expose their account.

Claimants further alleged that in September, 1987, Respondent Regan advised Claimants that they should purchase Liz Claiborne stock on margin; that Claimants authorized \$7500.00 to be used for this purpose; that Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") Mr. Regan's employer, mistakenly deposited \$24,430.00 into Claimants' account; and that Respondent Regan purchased \$33,383.00 worth of Liz Claiborne stock but did not purchase the stock on margin.

Claimants alleged that Merrill Lynch then backed out the deposit error causing the entire account to be on margin; that by backing out of the deposit error, the account was severely leveraged beyond Merrill Lynch's standard; and that Respondent Regan, or Respondent Porter, the Branch Manager of Merrill Lynch's Charleston Office, should have caught this error. Claimants also alleged that the margin was called and Claimants had to sell their entire investment portfolio; that had Merrill Lynch not made the deposit error, and Respondent Regan not excessively traded the account and had only purchased the dollar amount authorized, the account would not have been highly leveraged, causing Claimants to sustain losses beyond their limits.

Respondents denied all allegations of wrongdoing or liability and maintained that Claimants did not advise Respondent Regan that Claimants were interested in low-risk short term investments; that Claimants stated they expected a return of thirty percent (30%) or more from their stock market investments; that Respondent Regan advised the Claimants that this was an aggressive expectation which would require undertaking additional risk; and that Claimants understood the risks involved.

Respondents further maintained that Claimants often called Respondent Regan with investment ideas, which in some instances were penny stocks; that Respondent Regan dissuaded the Claimants from purchasing several of the stocks Claimants inquired about because of the risks involved; that prior to Claimants purchase of Liz Claiborne stock in September of 1987, Claimants discussed with

Respondent Regan the benefits and risks of trading on margin; and that Respondent Regan discouraged Claimants from trading on margin.

Respondents further maintained that Merrill Lynch debited \$24,430.00 which was erroneously deposited in Claimants' account; that the Claimants were informed that the \$8800.00 money market balance they maintained could be utilized to meet the margin call; and that rather than sell some stock to cover the margin debit, they elected to maintain their equity positions.

### **RELIEF REQUESTED**

Claimants requested an award against the Respondents in the amount of \$46,923.00, representing a \$31,118.00 loss plus interest.

Respondents requested that the Statement of Claim be dismissed and that any costs be assessed against the Claimants in favor of the Respondents.

### **OTHER ISSUES CONSIDERED & DECIDED**

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 originals remain on file with the NASD.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondent Donald R. Porter be and hereby are dismissed in all respects.
2. Respondent Stephen D. Regan be and hereby is liable to the Claimants in the sum of \$3,700.00, exclusive of interest.
3. Each party shall bear their respective costs, including attorneys' fees.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 adjournment fee = net \$400.00 due.

2 pre-hearing conferences X \$300 = net \$600.00 due.

2 sessions X \$400 = \$800 minus hearing session deposit of 400 = net \$400.00 due.

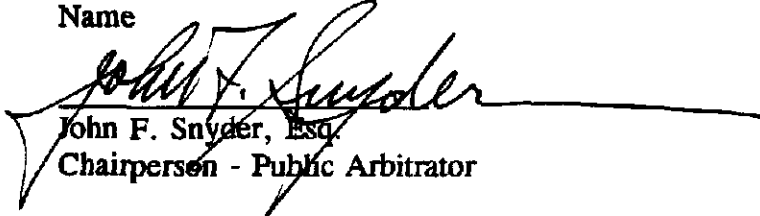
TOTAL FEES DUE = \$1400.00

Claimants be and hereby are liable and shall pay to the NASD the sum of \$700.00 to represent forum fees and Respondent Regan be and hereby is liable and shall pay to the NASD the sum of \$700.00 to represent forum fees.

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

Concurring Arbitrators' Signatures

Name

  
John F. Snyder, Esq.  
Chairperson - Public Arbitrator

Name

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Barney Stewart, III  
Industry Arbitrator

Dissenting Arbitrator's Signature

Name

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Alan L. Button  
Public Arbitrator

Date of Decision: May 3, 1994

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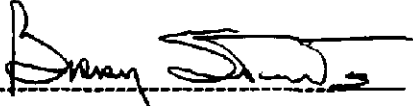
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Executed on:  
Date of Decision: May 3, 1994  
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