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**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the matter of the Arbitration Between

Name of Claimant  
Howard L. Wells

NASD Arbitration  
No. 93-04975

v.

Name of Respondents  
Waddell & Reed, Inc.  
Leslie C. Stipek

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**REPRESENTATION**

For Claimants: Paul N. Young, CEO - Securities Arbitration Group, Inc. - Marina Del Rey, California

For Respondents: David R. Burford, Esq. - Waddell & Reed, Inc. - Shawnee Mission, Kansas

**CASE INFORMATION**

Statement of Claim filed: December 2, 1993

Claimant's Submission Agreement signed: November 18, 1993

Joint Statement of Answer filed by Respondents: January 31, 1994

Submission Agreement signed by Respondent, Waddell & Reed, Inc. on January 28, 1994

Submission Agreement signed by Respondent, Leslie C. Stipek on January 27, 1994

**HEARING INFORMATION**

Hearing Dates / Sessions: November 9, 1994 - Two Sessions  
November 10, 1994 - One Session

Hearing Location: Los Angeles, California

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### CASE SUMMARY

Claimant, when he was in his early 50's and employed by the State of California as a heavy equipment operator with an annual salary of approximately \$30,000, invested funds he had inherited in the amount of \$200,000 with Respondent in certain mutual funds and \$60,000 in a real estate Limited Partnership known as Liberty Income. It is this partnership interest which is the subject of Claimant's claim.

Claimant contends he was told when he acquired the partnership interest he could get his money back in 5 years which was the approximate time he was planning to retire. When the 5 years elapsed and the partnership funds were not returned, Claimant filed this claim contending, among other things, lack of suitability, breach of contract, misrepresentation, failure to follow instructions, unauthorized transactions, breach of fiduciary duty, fraud, excessive trading, and violation of various SEC, NASD and NYSE rules. Claimant sought compensatory damages of \$60,000, interest of \$9,550, costs of \$3,850 and punitive damages of \$60,000.

Respondents denied any wrongdoing, contending that the claim was not eligible under Section 15 of the Code of Arbitration Procedure, nor was the filing of the claim timely under applicable statute of limitations, but even if it were eligible, Claimant's investment in the partnership met the partnership's suitability standards, that there was no misrepresentations or fraud or violation of any SEC, NASD and NYSE rules. Additionally, Respondents filed a counterclaim seeking recovery of their costs and punitive damages of \$25,000.

### RELIEF REQUESTED

Claimant sought compensatory damages of \$60,000, interest of \$9,550, costs of \$3,850 and punitive damages of \$60,000.

### OTHER ISSUES CONSIDERED AND 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 original remains 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. Each and every claim of Claimant, Howard L. Wells, against Respondents Waddell & Reed, Inc. and Leslie C. Stipek is dismissed.

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2. Respondent, Waddell & Reed, Inc., shall recover from Claimant costs in the sum of \$1,400.00.
3. Respondents' counter-claim for punitive damages is dismissed.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure,

Claimant is assessed the sum of \$1,400.00 in forum fees, calculated as follows:

Three (3) hearing sessions at \$750.00, less deposits of \$850.00.

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

### ARBITRATORS


#### Name

Donald S. Simons  
Lou von Dyl  
Andrew J. Sorensen

#### Public / Industry

Public Arbitrator  
Public Arbitrator  
Industry Arbitrator

#### Concurring Arbitrators' Signatures



Donald S. Simons

\_\_\_\_\_  
Lou von Dyl

\_\_\_\_\_  
Andrew J. Sorensen

Served 11/30/94

Date of Decision: November 10, 1994

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Public Arbitrator

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Industry Arbitrator

#### Concurring Arbitrators' Signatures

Donald S. Simons



Lou von Dyl

Andrew J. Sorensen

Served 11/30/94

Date of Decision: \_\_\_\_\_

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Served 11/30/94

Date of Decision: \_\_\_\_\_