

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Roger H. and Sherry T. Tumlin

93-05050

Name of Respondents

Quick & Reilly, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 6, 1993, Claimants Roger H. and Sherry T. Tumlin, who appeared Pro Se, alleged that they placed an order for 2500 shares of Atlas Corp. stock for Mr. Tumlin's regular account and 4000 shares of Atlas Corp. stock for Mr. Tumlin's IRA account with Respondent Quick & Reilly, Inc. Claimants further alleged that the broker at Respondent who took their order told them that "they both went through". Claimants contended that Respondent never executed these trades as they requested them, as both trades were placed in Mr. Tumlin's IRA account. Claimants contended that they made subsequent purchases of Atlas Corp. stock at later dates, not realizing Respondent's error. Claimants further contended that as a result of Respondent's mistake they have suffered a tax liability. As a result of the above, Claimants alleged that they have suffered damages for which the Respondent should be held liable.

Respondent Quick & Reilly, Inc., through its in-house representative Robert Bott, maintained that the two orders in question were made on September 2, 1993, and were placed in Mr. Tumlin's IRA account. Respondent further maintained that both orders were fully read back to Mr. Tumlin prior to entry and were acknowledged by him. Respondent contended that upon execution, the trades were verbally confirmed to Mr. Tumlin that afternoon. Respondent further contended that trade confirmations were sent for these trades the following day. Respondent maintained that for the next two weeks, it received no complaints from Claimants. Respondent further maintained that Claimants failed to mitigate

any alleged tax liability. Respondent contended that the Claimants have not incurred any tax liability, since the shares in question have yet to be sold. Respondent further contended that any potential capital gain to Mr. Tumlin's IRA account is tax deferred, and not tax exempt. As a result of the above, Respondent maintained that it should not be held liable in this matter.

RELIEF REQUESTED

Claimants Roger H. and Sherry T. Tumlin requested \$1,395.72 in actual damages.

Respondent Quick & Reilly, Inc. requested that the Claimants' Statement of 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, Larry J. Dagenhart, 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 November 29, 1993 and by the Respondent on February 22, 1994.

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 claims of Claimants Roger H. and Sherry T. Tumlin against Respondent Quick & Reilly, Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondent Quick and Reilly, Inc. is liable and shall pay to the Claimants \$50.00 as reimbursement of the filing fee.

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AFFIRMATION

I, **LARRY J. DAGENHART, ESQ.**, do hereby affirm upon my oath of 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 29, 1994