

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Richard J. Gallagher

94-01595

Name of Respondent(s)

Donald Williams  
Curtis Hammond

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 29, 1994, Claimant Richard J. Gallagher, who appeared pro se, alleged that Respondents Donald R. Williams ("Williams") and Curtis Hammond ("Hammond") did not properly handle his account. Claimant further alleged that Respondent Williams advised him to liquidate his holdings in the U.S. Government Securities Fund ("USGVT") and to use the proceeds to purchase the TCW/DW Term Trust 2003 ("the Trust"). Claimant contended that the two investments were substantially similar and he should not have been advised to switch. Claimant further contended that he suffered a loss upon liquidation of the Trust for which Respondents should be held liable.

Respondents Donald R. Williams and Curtis Hammond, through their representative, Janet T. Epstein, Esq., San Francisco, CA., maintained that Respondent Williams fully explained to Claimant the Trust, its objectives, advantages and risks, and gave the Claimant a prospectus. Respondents further maintained that they went over Claimant's portfolio with him and explained how the Trust helped to diversify Claimant's portfolio and lessen risk. Respondents contended that USGVT is an open-end mutual fund with no defined term while the Trust is a closed-end term trust which specifically seeks to return \$10.00 per share to investors at the end of the trust in 2003. Respondents further contended that the Trust helped to diversify Claimant's account because it invests in mortgage-backed and asset-backed securities, whereas USGVT invests primarily in U.S. Government debt. Respondents maintained that the Trust and USGVT also differ in the annual expenses they charge and their yields. Respondents

further maintained that Claimant had a responsibility to understand the Trust before investing, read the TMT prospectus and ask questions if there was something he did not understand and can not now deny responsibility for his decision to purchase the Trust. As a result of the above, Respondents contended that they should not be held liable.

### **RELIEF REQUESTED**

Claimant, Richard J. Gallagher, requested \$1,700.14 in actual damages.

Respondents, Donald R. Williams and Curtis Hammond, requested that the claims of the Claimant be dismissed.

### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Michael R. Scott, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 25, 1994 and by the Respondents on October 11, 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. Respondents Donald R. Williams and Curtis Hammond are jointly and severally liable and shall pay to the Claimant Richard J. Gallagher \$1,500.00 in actual damages.
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 Claimant Richard J. Gallagher, shall be retained by the NASD, Inc. Respondents Donald R. Williams and Curtis Hammond are jointly and severally liable and shall pay to the Claimant \$50.00 as reimbursement of the filing fee.

**Affirmation**

STATE OF WASHINGTON

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COUNTY OF KING

I, Michael R. Scott, do hereby affirm upon my oath  
as arbitrator that I am the individual described in and who executed this instrument,  
which is my oath and award.

Michael R. Scott  
Signature of Arbitrator

DATE OF DECISION: August 30, 1995