

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Allan and Patricia Solomon

95-00472

Name of Respondents

Montgomery Securities  
Robert P. White

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on January 30, 1995, Claimants Allan and Patricia Solomon ("Claimants"), through their representative, Jeffrey S. Salisbury, Esq., of Bowles & Verna, located in Walnut Creek, CA, alleged that Respondents Montgomery Securities ("Montgomery") and Robert P. White ("White"), in August of 1991, recommended grossly unsuitable transactions for their retirement trust account at Montgomery which they followed to their detriment. Claimants further maintained that they were unsophisticated investors with limited experience investing in simple money market accounts. Claimants contended White recommended that they invest all of the funds in their retirement account in bonds issued by Advanced Medical, Inc. ("AMI") and assured them the bonds were safe. Claimants further contended the bonds were speculative as graded by Standard & Poors and by placing all of the funds in one investment White failed to diversify their account. Claimants alleged that in December of 1992 they transferred their accounts to Dean Witter but White continued to advise them regarding AMI. Claimants further alleged that in November of 1993, the AMI bonds hit a all time low so they were sold. Claimants contended that as a result of the above, they have suffered a loss for which the Respondents should be held liable.

Respondents Montgomery Securities, and Robert P. White, through their representative, Julie L. Taylor, Esq., of Kessal, Young & Logan, located in San Francisco, CA, maintained that White has a 24-year career in the brokerage industry and has never been the subject of a customer complaint. Respondents further maintained that White had frequent contact with the Claimants and believed them to be sophisticated and intelligent investors. Respondents contended that Claimant were aggressive investors who know the inverse relationship between risk and reward when investing. Respondents further contended that overall Claimants profited by over \$72,000.00 during their relationship with White.

Respondents maintained that Claimants had a \$150,000.00 trust and placed \$42,000.00 of that in their retirement account at Montgomery. Respondents further maintained that before recommending AMI to Claimants, White thoroughly researched AMI discovering that AMI was stable and had sufficient cash resources. Respondents contended that the investment represented only 28% of the trust assets and 4% of the Claimants' total net worth. Respondents further contended that in December of 1992, Claimants transferred their accounts to Dean Witter and hired an investment advisor and on the basis of the new relationships they continued to hold the bonds throughout most of 1993. Respondents maintained that as a result of the above, they should not be held liable.

### **RELIEF REQUESTED**

Claimants Allan and Patricia Solomon, requested \$10,000.00 in actual damages plus interest and costs.

Respondents Montgomery Securities, and Robert P. White, 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, Joanna Leighton, Esq. was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Allan and Patricia Solomon, on January 30, 1995, and by Respondent Montgomery Securities, on May 2, 1995, and by Respondent Robert P. White, on April 20, 1995.

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 Respondents Montgomery Securities, and Robert P. White, are jointly and severally liable and shall pay to the Claimants Allan and Patricia Solomon, \$10,000.00 in actual damages.
2. The Respondents Montgomery Securities, and Robert P. White, are jointly and severally liable and shall pay to the Claimants Allan and Patricia Solomon, interest at the rate of 7% per annum from December 16, 1992 to the date of payment of the Award.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. The Respondents Montgomery Securities, and Robert P. White, are jointly and severally liable and shall pay to the Claimants Allan and Patricia Solomon, \$150.00 as reimbursement of the filing fee.
5. All other relief requests are denied.

**AFFIRMATION**

I, JOANNA LEIGHTON, 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.

  
Joanna Leighton, Esq.

DATE OF DECISION: January 12, 1996