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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Thomas W. and **Bernice** W. Porter,
Leticia Holt, Custodian for Zachary Holt,
Leticia Holt,
Dan Holt, Custodian for Jacob Holt, and
Dan Holt

9504193

Names of Respondents

***NationsSecurities**, Inc. and
Ted Kelly Smith

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REPRESENTATION

Claimants were represented by S. **Barcus** Hunter, Esq. of Hunter & Cameron, Ft. Worth, Texas.

Respondents were represented by Rodney **Acker**, Esq. of **Jenkins & Gilchrist**, Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on September 1, 1995.

Claimant's Submission Agreements were signed on August 23, 1995 by Thomas and **Bernice** Porter, on August 23, 1995 by Leticia Holt, individually and as custodian for Zachary Holt, on August 29, 1995 by Daniel Holt, individually and as custodian for Jacob Holt.

Claimants filed a Supplemental Statement of Claim with the NASD on May 20, 1996 pursuant to an order of the arbitration panel.

The Statement of Answer was filed with the NASD by Respondents, **NationsSecurities** and Ted Kelly Smith on October 16, 1995.

Respondent, **NationsSecurities**, Inc. 's Submission Agreement was signed on October 10,

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1995 by Vicky W. Ayers, Assistant General Counsel of Nations Securities and Respondent, Ted Kelly Smith's Submission Agreement was signed on October 16, 1995.

HEARING INFORMATION

The hearing took place on: May 22, 1996 for two (2) hearing sessions;
May 23, 1996 for three (3) hearing sessions; and,
May 24, 1996 for two (2) hearing sessions;

The hearing location was Dallas, Texas.

CASE SUMMARY

Claimants, Thomas Porter, Bernice Porter, Dan Holt and Leticia Holt ("Claimants") alleged that they sustained damages as a consequence of the actions of Respondents, NationsSecurities, Inc. ("NationsSecurities") and Ted Kelly Smith ("Smith"). Claimants were customers of Smith who agreed at Smith's suggestion to invest in Nations Government Income term Trust 2004. Claimants invested on the representation of Smith that the investment was for a term of ten years, yielded a fixed rate of at least 7% and was as safe as a certificate of deposit. Smith also allegedly represented that the only way the claimants could lose their principal was if the government went broke. Smith also allegedly represented that the Claimants would receive a guaranteed \$10.00 per share at the end of the year 2003 and a certain amount of income per month from the investment. In fact the monthly income from the investment was less than that represented by Smith and the investment was not guaranteed to provide a certain amount of return as represented. None of this was known to the claimants until after they invested. Claimants alleged that they never received a prospectus for either the Dean Witter Term Trust 2003 and the Nations Term Trust 2003 prior to investing monies in these vehicles. Claimants' supplemental claim asserted a claim for damages under the Texas Deceptive Trade Practices Act.

NationsSecurities and Smith alleged that the investment was subject to the risk of market fluctuations which were outside the control of Respondents. Smith allegedly never "guaranteed" that the dividends paid by the fund were at a fixed rate or that they would not fall. Smith asserted that he advised the claimants that the objective of the investment was the return of principal. NationsSecurities and Smith alleged that the investments for which Claimants allegedly did not get a prospectus were sold to them on the secondary market and there would not have been a prospectus delivered to them for these investments.

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RELIEF REQUESTED

Claimants requested actual damages of at least \$58,000.00, treble damages under the Texas Deceptive Trade Practices Act, attorney's fees and costs.

Respondents requested dismissal of the claims in their entirety and an award of costs, including reasonable attorney's fees incurred in defending a frivolous claim.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims asserted against Respondent, Ted Kelly Smith are denied and dismissed in its entirety;

2. Respondent, NationsSecurities, Inc. is liable for and shall pay to Claimants collectively, in all capacities, the sum of Thirty-six thousand eight hundred eighty eight dollars and no cents (\$36,888.00) in compensatory damages;

3. Claimants' requests for rescission and exemplary or treble damages pursuant to the Texas Deceptive Trade Practices Act are denied and dismissed in their entirety; and,

4. Respondent, NationsSecurities, Inc. is liable for and shall pay to Claimants, collectively, in all capacities, the sum of Twenty thousand dollars and no cents (\$20,000.00) as attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$200.00 non-refundable claim filing fee and the \$750.00 hearing session deposit. NationsSecurities shall reimburse the Claimants \$950.00

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representing the sums paid the NASD to initiate this action. Nationssecurities is assessed additional forum fees in the amount of \$4500.00. Forum fees were calculated at the rate of \$750.00 per hearing session for seven (7) hearing sessions for a total of \$5250.00.

Forum fees assessed by the arbitration panel are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures
Name

/s/ Hawk Vanberg
Hawk Vanberg, Esq.
Presiding Chairperson/Public Arbitrator

July 8, 1996
Dated

/s/ K. Steve Kimball
K. Steve Kimball
Panelist/Public Arbitrator

July 5, 1996
Dated

/s/ Stephen Denning
Stephen Denning
Panelist/Industry Arbitrator

July 8, 1996
Dated

Date Award Served on the Parties by the NASD: July 9, 1996