

**AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of Arbitration Between

T. Robie Scott and Opal Scott, T. Robie Scott IRA, and  
Opal Scott IRA,

Claimants,

and

No. 96-04987

Royal Alliance Associates, Incorporated and Francis Kelly,

Respondents.

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**REPRESENTATION OF PARTIES**

Claimants, T. Robie Scott and Opal Scott, T. Robie Scott IRA, and Opal Scott IRA, were represented by Charles Darwin "Skip" Davidson, Esquire of Davidson Law Firm, Ltd., located in Little Rock, Arizona.

Respondents, Royal Alliance Associates, Incorporated and Francis Kelly, were represented by Michael Schwartzberg, Esquire of Luboja & Thau, LLP, located in New York, New York.

**CASE INFORMATION**

T. Robie Scott and Opal Scott, T. Robie Scott IRA, and Opal Scott IRA's Statement of Claim was filed on or about November 8, 1996.

T. Robie Scott and Opal Scott's Submission Agreement was signed on November 4, 1996.

Royal Alliance Associates, Incorporated and Francis Kelly's Statement of Answer was filed on or about February 7, 1997.

Royal Alliance Associates, Incorporated's Submission Agreement was signed on January 24, 1997 by Barbara McInerney, Senior Vice President & General Counsel of Royal Alliance Associates, Inc.

Francis Kelly's Submission Agreement was signed on January 2, 1997.

### HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on: July 22, 1997 for two (2) sessions; July 23, 1997 for two (2) sessions; and July 24, 1997 for two (2) sessions.

The hearing was held in Little Rock, Arkansas.

### CASE SUMMARY

Claimants, T. Robie Scott and Opal Scott, T. Robie Scott IRA, and Opal Scott IRA (hereinafter collectively referred to as "Claimants"), brought this action to recover damages in excess of \$101,000.00 allegedly caused by the unsuitable recommendations, breach of fiduciary duty, and violations of NASD conduct rules by Mr. Francis Kelly ("Mr. Kelly") who was a registered representative of Royal Alliance Associates, Incorporated ("Royal Alliance").

According to Claimants, Mr. Kelly was aware that Claimants were low risk-takers, interested in safety and liquidity based on their age and financial status. Claimants asserted that, based on Mr. Kelly's recommendations, they incurred losses on the following investments, which were highly leveraged, illiquid, and high risk limited partnerships:

<u>DATE</u>	<u>INVESTMENT</u>	<u>AMOUNT</u>
T. Robie Scott's IRA:		
November 1990	Star Partners III	\$3,000.00
May 28, 1993	Swift Energy Pension Partners	3,500.00
Opal Scott's IRA:		
November 1990	Star Partners III	3,000.00
May 28, 1993	Swift Energy Pension Partners	3,500.00
T. Robie Scott and Opal Scott's joint account:		
July 31, 1986	Carlyle Real Estate XV, L.P.	18,000.00
August 22, 1994	Textainer Equipment Fund V	30,000.00
September 30, 1994	Swift Energy Operating Partners 94-C	20,000.00
November 29, 1994	Bravin Net Lese V	<u>20,000.00</u>
<b>TOTAL:</b>		<u><b>\$101,000.00</b></u>

Claimants asserted the following claims: violations of the rules of fair practice and NASD conduct rules; suitability; use of manipulative and deceptive devices; and agency and control person liability on the part of Royal Alliance.

Respondents, Mr. Kelly and Royal Alliance (hereinafter collectively referred to as "Respondents"), denied the allegations set forth in the Statement of Claim as they related to any wrongdoing on their part. Respondents stated that Claimants were selectively complaining about certain limited partnership investments that they purchased through Respondents, and at the same time ignoring other, profitable investments also effected through Respondents in the very same accounts. Respondents contended that there was nothing improper, or unsuitable, about the limited partnership investments selectively placed at issue by Claimants in this proceeding, especially when considered in light of Claimants' total portfolio. Respondents made the following affirmative defenses: (1) Respondents did not guarantee Claimants' returns on any investments; (2) Claimants contributed to and/or assumed the risk of their alleged losses, the existence of which Respondents continue to deny; (3) any losses Claimants sustained, if any, resulted solely from the vagaries and volatility of the securities markets, and not from any purported wrongdoing by Respondents; (4) Royal Alliance fully complied with all applicable rules and regulations regarding the supervision of Claimants' accounts; (5) Claimants' investment portfolio must be considered in its entirety, and not just with respect to selected investments with which Claimants might be unhappy; (6) Claimants' recovery herein, if any, must be offset by all distributions and other gains on the investments that they made - gains which, incidentally, also had not been referred to in their statement of claim; and (7) any recovery should have been offset by the amount of tax credits and deductions available to Claimants based on the subject limited partnerships.

#### **RELIEF REQUESTED**

Claimants, T. Robie Scott and Opal Scott, T. Robie Scott IRA, and Opal Scott IRA, requested an award for: compensatory damages of \$101,000.00; pre-award and post-award interest; and punitive damages for all of their costs, expenses, and disbursements, including reasonable attorneys fees in pursuing this claim.

Respondents, Royal Alliance Associates, Incorporated and Francis Kelly, requested that the Statement of Claim asserted against them be dismissed in its entirety, and, as to Mr. Francis Kelly, that the Statement of Claim be expunged from his U-4.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

On June 26, 1997, Respondents, Royal Alliance Associates, Inc. and Francis Kelly, moved for a partial dismissal to dismiss the claims relating to Carlyle Real Estate, XV, L.P. After reviewing the motion and the response as well as listening to oral arguments, the arbitrators decided to hold in abeyance their ruling until the conclusion of the hearing.

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(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

### 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. Royal Alliance Associates, Incorporated and Mr. Francis Kelly are jointly and severally liable for and shall pay T. Robie Scott and Opal Scott compensatory damages of \$18,950.00.
2. Other than forum fees addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied and dismissed with prejudice.

### FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were six (6) hearing sessions x \$750 = \$4,500 in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (the "Code") a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to § 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by T. Robie Scott and Opal Scott, T. Robie Scott IRA, and Opal Scott IRA.

T. Robie Scott and Opal Scott, T. Robie Scott IRA, and Opal Scott IRA are jointly and severally liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution additional forum fees in the amount of \$1,500.

Pursuant to § 10333 of the Code, Royal Alliance Associates, Incorporated is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution the member surcharge of \$350.

Royal Alliance Associates, Incorporated and Mr. Francis Kelly are jointly and severally liable for

and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$2,250.

**Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

**Concurring Arbitrators' Signatures**

Patrick A. Burrow, Esquire  
Patrick A. Burrow, Esquire  
Chairperson  
Public Arbitrator

August 13, 1997  
Dated:

Nancy J. Jones  
Nancy J. Jones  
Panelist  
Public Arbitrator

July 31, 1997  
Dated:

Jack C. Payne  
Jack C. Payne  
Panelist  
Industry Arbitrator

August 15, 1997  
Dated:

For NASD use only:

Date Award was served on the parties: August 18, 1997