

AWARD  
NASD Regulation, Inc.

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In the Matter of the Arbitration Between

Name of Claimant

Bruce M. MacArthur, as Trustee  
for the Bruce M. MacArthur Trust

98-00053

vs.

Name of Respondents

Estate of Herbert Davidson  
Meyers, Pollock, Robbins, Inc.

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REPRESENTATION

Claimant Bruce M. MacArthur, Trustee for the Bruce M. MacArthur Trust, ("Claimant") was represented by John M. Braswell, Esq., Redmon, Boykin & Braswell, LLP, Alexandria, Virginia.

The Estate of Respondent Herbert Davidson ("Davidson") did not appear.

Respondent Meyers, Pollock, Robbins, Inc. ("MPR") did not appear.

CASE INFORMATION

Claimant filed the Statement of Claim on January 6, 1998.  
Claimant filed an Amended Statement of Claim September 18, 1998.  
Claimant's Uniform Submission Agreement was executed February 4, 1998.

Davidson filed a Statement of Answer July 9, 1998.  
Davidson's Uniform Submission Agreement was signed April 3, 1998.

MPR did not file a Statement of Answer or an executed agreement to arbitrate.

HEARING INFORMATION

Pre-Hearing Conference:                      September 4, 1998/one session  
   September 22, 1998/one session

Hearing Date/Session:                      January 6, 1998/two sessions

Hearing Location:                              Washington Monarch Hotel, Washington, D.C.

### CASE SUMMARY

Claimant, Bruce M. MacArthur, in his representative capacity as the Trustee of the Bruce M. MacArthur Trust, alleged that on January 6, 1995, Claimant and his wife Mrs. Barbara MacArthur met with Respondent Davidson at Davidson's office, at which time Davidson told them that Claimant was overinvested in stocks, which can be volatile. Claimant further alleged that Davidson told them that he was a conservative broker, and that he wanted to structure the Trust with what he called a "sleep-at-night portfolio", by which he meant a conservative portfolio. Claimant contended that Davidson suggested that a sizeable portion of the portfolio be liquidated, and that the Trust purchase bonds recommended by Davidson, which were more conservative. Claimant asserted that he informed Davidson that virtually all of Claimant's stocks were highly appreciated, and that the Trust would generate a large capital gain tax if the stocks were sold. Claimant alleged that Davidson then proposed what he called an "in-house trade" in which the Trust would purchase securities at above current market prices, and then immediately sell them "in-house" at current market prices, which would be much less than their purchase price, thereby incurring a sizeable capital loss, which would be used to offset the capital gain. Claimant contended that Davidson said that in order to "restore the account," in 1996, Davidson would arrange "in-house trades" for Claimant to purchase publicly-traded securities at far below prevailing market prices, to a degree sufficient to "restore" the losses incurred in 1995 as a result of the "in-house" trade. Claimant further contended Davidson stated that his office owned an entire tranche of stocks which Davidson controlled, with which he could accomplish the 1996 trade which would "restore the account." Claimant stated he was reluctant to undertake such a transaction, but Davidson assured Claimant that there was no way that he could fail to "restore the account" in 1996. Claimant alleged that by March 8, 1995, Claimant had transferred a total of \$151,611 from their First of America Brokerage Account to Meyers, Pollock & Robbins. Claimant was induced to follow Davidson's advice on seven FNMA bonds, and Davidson sold the FNMA bonds at various times in 1995, at far below their purchase prices, generating losses on all seven FNMA bonds totaling \$44,641.45. Claimant asserted that Davidson said he did so to achieve a bond-to-stock ratio closer to 60/40 portfolio, in order to fulfill what Davidson called "the current average recommended asset allocation for a typical investor of your age." In 1996, Claimant said he began asking Davidson to "restore the account," as he had promised he would do in 1995 and despite vigorous demands by Claimant throughout 1996 and 1997, Davidson failed to restore the account. Instead, Claimant alleged Davidson switched into several different new investment strategies, including purchases of zero-coupon bonds; none of these new strategies were successful. Ultimately, Claimant asserted Davidson liquidated the investments, and on December 18, 1996, Davidson, without authority from Claimant, used Claimant's funds to purchase 4,700 shares of Comscript, Inc. ("Comscript") for \$41,078.00. Claimant further asserted that on December 20, 1996, Davidson, again without authority from Claimant, used Claimant's funds to purchase 1,070 shares of Comscript for \$9,696.88, bringing the total of funds misappropriated to purchase stock to \$50,774.88.

Claimant alleged the Comscript stock was worth only \$23,438.00 on June 30, 1997 and, as of December 16, 1997, it was trading at only \$2.50 per share, making the total of the Comscript stock purchased by Davidson worth only about \$14,425.00. Claimant further alleged that Davidson's purchase of the Comscript stock on takeover speculation was an inappropriately risk-

intense investment given Claimant's conservative investment profile and was contrary to Davidson's stated objective for Claimant, which was to diversify out of stocks. Most importantly, Claimant contended the trades were unauthorized. Claimant alleged that Davidson's actions violated Sections IM-2310-2(b)(4)(A)(ii), IM-2310-2(b)(4)(A)(iii), IM-2310-2(b)(4)(A)(iv), and IM-2310-2(b)(4)(B), as well as Sections 2120, 2310, IM-2310-2, and 2330(e) of the Conduct Rules of the NASD.

Respondent Davidson, in his Statement of Answer, denied the allegations of wrong-doing as asserted in the Statement of Claim. Davidson maintained that he did meet with Claimant to try to diversify the Trust's portfolio and have a more substantial weighting in bonds. Davidson also maintained that they recognized that a significant capital gain tax would be generated if a sizeable portion of the portfolio was liquidated, and therefore an investment strategy was developed to minimize the capital gain by creating an offsetting capital loss in the bond market. While Davidson admitted the purchases of Comscript, he denied the purchases were unauthorized, and stated that Claimant was a sophisticated investor with a high net worth, who fully understood the investment strategy and agreed to it.

MRP did not file an answer.

#### **RELIEF REQUESTED**

Claimant requests an award of damages in the amount of \$101,611, which is his original investment of \$151,611, which Davidson promised would be restored to Claimants in 1996, minus the \$50,000 check received in 1996.

Respondent Davidson, in his Statement of Answer, requested that the claims be dismissed.

Respondent MPR did not request relief.

#### **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.

Upon review of the file and the representations on behalf of the Claimant, the undersigned arbitrators have determined that liability would be considered as to Respondent MPR as appropriate efforts were made to serve the claim, but the receipt from the United States Postal Service for the Statement of Claim says "unclaimed." Therefore, the claim is considered served pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators also determined that appropriate efforts were made to provide Respondent MPR notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondent MPR did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the Code and is bound by the determination of the arbitration panel on all issues submitted.

The panel was informed in July 1998 that Respondent Herbert Davidson was deceased. Claimant submitted an Amended Statement of Claim naming the Estate of Herbert Davidson.

### 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. That the Estate of Herbert Davidson and Meyers, Pollock, Robbins, Inc. are jointly and severally liable to and shall pay to Bruce M. MacArthur, as Trustee for the Bruce MacArthur Trust, \$60,000.00; and
2. That the Estate of Herbert Davidson and Meyers, Pollock, Robbins, Inc. are jointly and severally liable to and shall reimburse directly to Bruce M. MacArthur, as Trustee for the Bruce MacArthur Trust, \$750.00 hearing session deposit previously submitted to the NASD; and
3. That each party shall bear its own costs and expenses with the exception of the forum fees as specified below; and
4. That any and all relief not specifically addressed herein is denied.

### OTHER COSTS

Pursuant to Rule 10333 of the Code, First Colonial Securities Group, Inc., previously a named Respondent was assessed a member surcharge of \$1,500.00, which was paid, as well as hearing processing fees of \$3,100.00, which were not paid. MPR was also assessed a member surcharge which was not paid.

**FORUM FEES**

Pursuant to Rule 10332 of the Code, a hearing session is defined as any meeting between the arbitrators and the parties, including a prehearing conference, which lasts four hours or less. Forum fees in this arbitration are as follows:

2 Prehearing sessions x \$750.00 = \$1,500.00  
2 Hearing sessions x \$750.00 = \$1,500.00  
Total Forum Fees = **\$3,000.00**

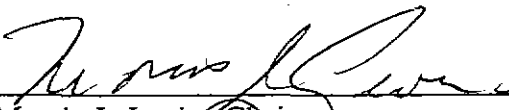
Forum Fees are assessed to Meyers, Pollock, Robbins, Inc., and the Estate of Herbert Davidson, jointly and severally. Meyers, Pollock, Robbins, Inc., and the Estate of Herbert Davidson shall receive credit for the \$750.00 hearing session deposit previously submitted to the NASD by Claimant, and ordered to be reimbursed to Claimant, leaving a net forum fee assessment due from Respondents of \$2,250.00.

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

DATE

Feb 2, 1999

CONCURRING ARBITRATORS' SIGNATURES

  
Morris J. Levin, Chairman  
Public Arbitrator

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Gerson B. Kramer  
Public Arbitrator

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Anne Q. Uno  
Industry Arbitrator

Date Decision Served by NASD Regulation:

February 2, 1999

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Public Arbitrator

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Gerson B. Kramer  
Public Arbitrator

Jan. 21, 1999

Anne Q. Uno  
Anne Q. Uno  
Industry Arbitrator

Date Decision Served by NASD Regulation: February 2, 1999

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DATE

CONCURRING ARBITRATORS' SIGNATURES

1/21/99

Morris J. Levin, Chairman  
Public Arbitrator

Gerson B. Kramer  
Public Arbitrator

Anne Q. Uno  
Industry Arbitrator

Date Decision Served by NASD Regulation:

February 2, 1999