

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Names of Claimants

David W. Dorsett, Michelle L. Dorsett,  
James E. Dorsett and Regina Dorsett

and

Case Number: 04-08543  
Hearing Site: Houston, Texas

Names of Respondents

Birchtree Financial Services, Inc.,  
Roan-Meyer Associates, LP, and  
Charles Dwain Davis, Jr.

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**NATURE OF DISPUTE**

Customers vs. Members and Associated Person

**REPRESENTATION OF PARTIES**

David W. Dorsett, Michelle L. Dorsett, James E. Dorsett and Regina Dorsett ("Claimants") were represented by Frank Pinedo, Esq., Houston, Texas.

Birchtree Financial Services, Inc. ("Birchtree") was represented by Anthony J. Durone, Esq. Berkowitz, Stanton, Brandt, Williams & Shaw LLP, Kansas City, Missouri.

Roan-Meyers, Associates LP ("Birchtree") was represented by Charles Lake, Esq., Investment Bankers, New York, New York.

Charles Dwain Davis, Jr., ("Davis") did not enter an appearance in this matter.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 20, 2004.

The Submission Agreement of Claimants, David W. Dorsett and Michelle L. Dorsett, was signed on or about September 19, 2004.

The Submission Agreement of Claimants, James E. Dorsett and Regina Dorsett, was signed on or about October 5, 2004.

The Statement of Answer was filed by Respondent, Birchtree, on or about February 21, 2005. The Submission Agreement of Birchtree was signed on or about January 19, 2005.

The Statement of Answer was filed by Respondent, Roan-Meyer, on or about March 24, 2005. Respondent Roan-Meyer did not submit a Submission Agreement.

Respondent Davis did not file either a Submission Agreement or a Statement of Answer.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract; embezzlement; negligence; fraud; breach of fiduciary duty; misrepresentation; omission of facts; failure to supervise; and failure to execute. The causes of action are related to the recommendation and purchase of various unspecified securities. Claimants alleged that Respondent Davis failed to follow their instructions to purchase securities, and instead used their funds for his own purposes. Claimant alleged that Respondents, Birchtree and Roan-Meyers, failed to supervise Davis and are liable for his actions.

Unless specifically admitted in its Answer, Respondent Birchtree denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim, and each claim stated therein, failed to state a claim upon which relief may be granted; Claimants' alleged claims are barred by the applicable statutes of limitations and Claimants' allegations against Birchtree failed because there is no basis for respondeat superior, agency or controlling-entity liability or other vicarious liability based on Davis' independent conduct outside the scope of his employment.

Unless specifically admitted in its Answer, Respondent Roan-Meyer denied the allegations made in the Statement of Claim and stated that it had no knowledge of Davis' fraudulent actions, which it asserted appears to have occurred before his affiliation with Roan-Meyer, and continued after his brief registration with the firm had ended.

### **RELIEF REQUESTED**

Claimants, David W. Dorsett and Michelle L. Dorsett, requested \$90,000.00 in compensatory damages, plus interest, costs, attorneys' fees, and such further relief as the panel deemed fair.

Claimants, James E. Dorsett and Regina Dorsett, requested \$34,233.00 in compensatory damages, plus interest, costs, attorneys' fees, and such further relief as the panel deemed fair.

Claimants jointly also requested \$248,466.00 in punitive damages.

Respondent Birchtree requested that the claims asserted against it be denied in their entirety and it be awarded its costs and attorneys' fees.

Respondent Roan-Meyer requested that the claims asserted against it be denied in their entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent Roan did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the arbitration panel on all issues submitted.

On or about May 3, 2005, Claimants dismissed Respondent, Roan-Meyers Associates, LP, from this proceeding with prejudice.

On or about August 1, 2005, Claimants dismissed Respondent, Birchtree Financial Services, Inc., from this proceeding with prejudice.

By letter dated August 10, 2005, Claimants opted to proceed against Respondent Davis pursuant to Rule 10314(e) of the NASD Code of Arbitration Procedure ("Code"). The arbitrator determined that Respondent Davis was properly served notice of the Statement of Claim and Notification of the Arbitrator by certified mail, and that Respondent Davis is required to submit to arbitration pursuant to the Code and is bound by the determination of the Arbitrator on all issues submitted.

### **AWARD**

The undersigned arbitrator has decided and determined in full and final resolution of the issues for determination as follows:

- 1) Respondent, Charles Dwain Davis, Jr., is liable for and shall pay to Claimants, David W. Dorsett, Michelle L. Dorsett, James E. Dorsett and Regina Dorsett, the sum of \$123,233.00 in compensatory damages;
- 2) Respondent, Charles Dwain Davis, Jr., is liable for and shall pay to Claimants, David W. Dorsett, Michelle L. Dorsett, James E. Dorsett and Regina Dorsett, interest at the rate of 6% per annum from and including June

5, 2000, through and including August 5, 2005, for a total amount of \$38,202.23 pursuant to Texas statute; and

- 3) Any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$300.00

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms are Birchtree Financial Services, Inc., and Roan-Meyers Associates, LP.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

#### **Forum Fees and Assessments**

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: May 31, 2005 1 session	

<u>Default Proceedings</u>	<u>= \$ 300.00</u>
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<b>Total Forum Fees</b>	<b>= \$1,425.00</b>
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The Arbitrator has assessed \$1,425.00 of the forum fees to Charles Dwain Davis, Jr.

### FEE SUMMARY

Claimants, David W. Dorsett, Michelle L. Dorsett, James E. Dorsett and Regina Dorsett, are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$1,425.00
Refund due to Claimants	= \$1,125.00

Respondent, Birchtree Financial Services, Inc., is liable for:

<u>Member Fees</u>	= \$5,200.00
<u>Total Fees</u>	= \$5,200.00
<u>Less payments</u>	= \$5,950.00
Refund due to Birchtree	= \$ 750.00

Respondent, Roan-Meyer Associates, LP, is liable for:

<u>Member Fees</u>	= \$2,450.00
<u>Total Fees</u>	= \$2,450.00
<u>Less payments</u>	= \$2,450.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, Charles Dwain Davis, Jr., is liable for:

<u>Forum Fees</u>	= \$1,425.00
<u>Total Fees</u>	= \$1,425.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,425.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATOR**

Oren L. Connaway, JD – Public Arbitrator, Presiding Chair

Arbitrator:

/s/ Oren L. Connaway, JD  
Oren L. Connaway, JD  
Public Arbitrator, Presiding Chair


September 27, 2005  
Date

September 28, 2005  
Date of Service (For NASD office use only)

**ARBITRATOR**

Oren L. Connaway, JD – Public Arbitrator, Presiding Chair

Arbitrator:

  
Oren L. Connaway, JD  
Public Arbitrator, Presiding Chair

September 27, 2005  
Date

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Date of Service (For NASD office use only)