

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Irene Robbins & Bert Shepherd,
Trustees of the Davis Robbins Family
Trust and the Davis Robbins
Marital Trust

89-01751

Name of Respondent(s)

Roland Day
John Albert DeCastro Day

CASE SUMMARY

Claimants alleged that Respondents executed trades in the Claimants' accounts without prior orders from, or the permission of, or even prior notice to, the Claimants, damaging the Trusts' accounts. The Claimants further alleged that the trades executed by the Respondents were excessive and constituted churning in an effort to generate commissions. The Claimants also alleged that the Respondent John Day was improperly supervised by Roland Day who allegedly was aware at all times of the activity in the Trusts' accounts. Respondents maintained that the Claimant Bert Shepherd monitored all activity in the accounts and was cognizant at all times of the methods of trading and status of the accounts. Respondents further maintained that the accounts were handled in accordance with the desires and instructions of the Trustees who never expressed any dissatisfaction with the manner in which the accounts were handled until a law suit was filed in January 1989. Respondents also maintained that losses in the Claimants' accounts were due to the market break of October 19, 1987 when the equity investments in both accounts declined substantially in value.

RELIEF REQUESTED

Claimants requested \$4,200,000.00 in actual damages, \$12,000,000.00 in punitive damages, \$12,600,000.00 in RICO damages, attorneys' fees, costs, and expenses. Respondents requested that the claims of the Claimants be dismissed.

AWARD

On September 24, 1990, October 1, 1990, October 22, 1990, October 23, 1990, and October 24, 1990 in Atlanta, Georgia, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimants on June 14, 1989, by Respondent Roland Day on September 15, 1989, and by Respondent John Day on September 15, 1989. The initial Statement of Claim was filed on June 16, 1989. The arbitration panel having considered the pleadings, the testimony, the evidence presented at the hearing, and all post-hearing submissions, has determined in full and final resolution of all issues submitted for determination as follows:

- (1) Respondents Roland Day and John Day are jointly and severally liable to the Claimants in the amount of Three Hundred Seventy Five Thousand Dollars and No Cents (\$375,000.00).
- (2) The Claimants' claim for punitive damages is denied.
- (3) The Claimants' claim for RICO damages is denied.
- (4) The Respondents' Motion to Recess the Hearing is denied as unanimously determined by this panel at the hearing of this matter.
- (5) The parties shall each bear their respective costs including attorneys' fees.
- (6) Pursuant to Section 43 of the Code of Arbitration Procedure, Respondents Roland Day and John Day are hereby assessed \$2,500.00 in forum fees. \$1,000.00 of the \$2,500.00 shall be reimbursed to the Claimants as a refund of their initial filing fee, and \$1,500.00 of the \$2,500.00 shall be made payable to the NASD, Inc. as costs of the ten hearing sessions conducted in this matter.

Harold Siegel

Stuart Meyers



David Saylor

Dated:

AWARD

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- (3) The Claimants' claim for RICO damages is denied.
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Harold Siegel

Stuart Meyers

David Saylor

Dated: 12/14/90

AWARD

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Harold Siegel



Stuart Meyers

404-399-775

David Saylor

Dated: