

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Harry A. Koppel

Case No. 92-00340

Name of Respondent(s)

J.W. Charles Securities Inc.  
Daniel Dailey

**REPRESENTATION**

For Claimant, Harry A. Koppel ("Koppel"): Robert Wayne Pearce, Esq. of Lerner and Pearce, P.A.

For Respondent, J. W. Charles Securities, Inc. ("JWC"): Howard A. Teacher, Esq. of Teacher Valinsky & Kain.

Respondent, Daniel Dailey ("Dailey"): *Pro Se*.

**CASE INFORMATION**

Amended Statement of Claim filed: December 18, 1992. Claimant's Submission Agreement signed: January 28, 1992.

Respondent, JWC's, Statement of Answer filed: January 6, 1993. Respondent's Submission Agreement signed: February 11, 1992 by Charles E. Scarlett on behalf of JWC.

Respondent, Dailey, did not file a Statement of Answer or Sign a Submission Agreement as required by Sections 12 and 25 of the Code.

**HEARING INFORMATION**

On April 5, 1993, in Fort Lauderdale, Florida, a pre-hearing conference lasting one session was conducted via telephone conference call with an arbitrator.

On November, 8, 1993, in Fort Lauderdale, Florida, a hearing lasting one (1) \_\_\_\_ session was conducted.

### **CASE SUMMARY**

Claimant alleged that: at the time of hiring Dailey, JWC was required to inquire with Dailey's past employers for references; had JWC been diligent in its inquiry, they would have known about Dailey's prior conduct; in August, 1989, Dailey solicited Claimant to open an account with JWC; during the course of the solicitation, Dailey informed Claimant that he was a successful option trader who had a special relationship with a key employee of the Bass Brothers, a Texas multi-millionaire investment team; Dailey misrepresented that he was receiving advice from a key Bass Brother employee, as well as partner of a major stock firm; Dailey aggressively solicited Claimant to trade options and common stock; in the course of these solicitations, Dailey repeatedly stated that his source at Bass Brothers was the origin of the advice; that on at least one occasion, Dailey exercised unauthorized discretion over Claimant's account and made a transaction without consulting Claimant that in effect, Dailey exercised de facto control over the course of Claimant's account; the account was churned for Respondents' benefit; and that Respondent's liability is premised upon the following: negligent hiring of Dailey by JWC; negligent supervision of Dailey by JWC; negligent retention of Dailey as employee by JWC; violation of Chapter 517.301, Florida Statutes; violation of Sections 812.014 and 772.10, Florida Statutes; common law fraud; breach of fiduciary duty; negligent management; violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10(b)-5; and breach of contract.

Respondent, JWC, denied all allegations of wrongdoing and alleged affirmative defenses including but not limited to: waiver; estoppel; JWC acted properly and in good faith regarding Claimant's account; all transactions were conducted in accordance with all applicable rules and regulations; Claimant is a sophisticated investor; failure to state a cause of action; statute of limitations.

Respondent, Dailey, failed to file an Answer and did not appear at the hearing.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in excess of \$232,626.38, attorney's fees, and costs.

Respondent, JWC, requested dismissal, plus costs, and attorney's fees.

Respondent, Dailey failed to file an Answer.

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

1. This Panel finds that Dailey was required to file an Answer and sign a Submission Agreement pursuant to Sections 12 and 25 of the Code, Dailey being a person associated with an NASD member firm at the time this controversy arose.
2. For the reasons set forth in the record of proceedings and contained in Arbitrator's Exhibit #2, this Panel finds service upon and notice to Respondent, Dailey. The NASD has made every attempt to locate and serve Dailey with notice of this hearing as demonstrated by the evidence contained in Arbitrator's Exhibit #2.
3. Prior to the commencement of the hearing, Claimant and Respondent, JWC, entered into a settlement agreement. Consequently, Respondent, JWC, was dismissed with prejudice from the proceeding.
4. The Claimant has agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, Claimant has 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, and Respondent, Dailey, neither requesting an adjournment of this matter nor appearing at the hearing, notwithstanding his knowledge of this matter as evidenced in the record of proceedings, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Dailey, is found liable for violation of Chapter 517 of the Florida Statutes, and shall pay to the Claimant the amount of \$235,000 for actual compensatory damages and costs.
2. Respondent, Dailey, is also found liable and shall pay to the Claimant the further amount of \$22,000 for attorney's fees pursuant to Section 517.211 Florida Statutes.

### **OTHER COSTS**

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

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**FORUM FEES**

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,050 (one pre-hearing conference x \$300 x plus one session x \$750 per session).
2. Respondent, Dailey, is hereby assessed \$1,050, of which \$750 shall be paid directly to the Claimant as a refund of his hearing session deposit and \$300 of which shall be payable to the NASD, Inc.
3. The NASD shall retain the non-refundable filing fee of \$200 paid by the Claimant and shall refund to Claimant the \$550 overpayment.
4. Respondent, Dailey, shall reimburse the Claimant \$200 for the non-refundable filing fee.

Fees are payable to the National Association of Securities Dealers, Inc.

**Concurring Arbitrators' Signatures**

/s/  
Steven Goerke, Esq.

Public

/s/  
Norman L. Weiss

Public

/s/  
Beverly B. Kennedy

Industry

Date of Decision: December 2, 1993