

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Dana R. Dodson

92-01775

Name of Respondent

Barrett Day Securities, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 28, 1992, Claimant Dana Dodson, who appeared Pro Se, alleged that on June 29, 1990 he purchased 2,500 shares of UTS-Quicksilver Enterprises, Inc. at 1 1/8 for \$2,812.50 plus \$12.00 miscellaneous from Respondent Barrett Day Securities, Inc. by and through Raymond A. Frias and subsequently after this purchase Mr. Frias contacted Claimant to inform him that the stock was now selling at 1 3/4 and should increase to \$2.50, at which time, Claimant instructed Respondent by and through Mr. Frias to sell the stock if it increased to \$2.00. Claimant further alleged that Respondent by and through Mr. Frias responded that he would in fact sell the stock at \$2.00 which would have amounted to \$5,000.00, whereby the stock did reach \$2.50, for a total of \$6,250.00. Claimant contended that he later received a call from Respondent by and through Mr. Anthony Vessalo stating that Mr. Frias was fired for handling illegal transactions and the stock he purchased supposedly went up to \$2.50 per share but was never sold, in addition a new stock called Bridal Expos was put into his account without his authorization. Claimant further contended that on September 19, 1990 he received a call from Mr. Frias who advised him to transfer his account out of Respondent due to the fact that they were going out of business, at which time, Claimant's transfer to his new firm, Paulson Investment Company, Inc. took 4 months because Respondent's clearing house, OTRA Clearing, Inc. would not send the stock due to a 4,000 share debit of the unauthorized stock of Bridal Expos in his account whereby Claimant incurred losses due to Respondent's inappropriate handling his account.

Respondent Barrett Day Securities, Inc. by and through their counsel Ruthann G. Niosi, Esq., Sole Practitioner, maintained that on settlement date June 29, 1990 2,500 shares of UTS-Quicksilver Enterprises, Inc. were purchased in Claimant Dana Dodson's account whereby the purchase was effected by a broker Raymond Frias. Respondent further maintained that on September 12, 1990 for settlement date September 19, 1990, 4,000 UTS of Bridal Expo, an initial public offering, was purchased in Claimant's account and as far as Respondent was aware, the trade was authorized, and as such was executed properly by them on behalf of their broker Mr. Frias. Respondent contended that although Claimant alleges that this purchase was unauthorized and he is vague as to the date he first became aware of the purchase, it can be presumed from the fact that the prospectus was mailed to Claimant on September 14, 1990 that the Claimant was aware of the purchase in his account from at least on or around that date. Respondent further contended that as it is the responsibility of the incoming broker dealer to process the transfer, not the outgoing, Respondent played no part in the acceptance or rejection of the account transfer request, and certainly did nothing to hinder or render its facilitation more difficult. Respondent asserted that they became aware sometime around November, 1990 that Claimant did not desire the UTS-Bridal Expos, or that Claimant felt the transaction was unauthorized and immediately caused the trade to be canceled on December 4, 1990 whereby it continued to be the new firms responsibility as the incoming broker dealer to process the transfer request, which not until December 14, 1990 that Claimant's account was processed to be transferred. Respondent further asserted that it was not until February, 1991 that the new firm accepted the transfer of the account. Respondent argued that it is apparent that Claimant and Mr. Frias have had disagreements in the past, and that they have litigated them whereby Claimant has been unable to collect a debt due him from Mr. Frias, and he is now, without basis attempting to collect from a deeper pocket.

Respondent further asserted that the tape recording submitted by Claimant not be admissible as evidence in this matter, whereby the veracity of the actual recording is in question plus the true and accurate meaning of the conversations is easily distorted by editing thus, it should not be admissible.

RELIEF REQUESTED

Claimant Dana Dodson requested \$9,225.00 in actual damages plus interest and other expenses, including the NASD filing fee.

Respondent Barrett Day Securities, Inc. requested the claim be dismissed in its entirety and they be awarded attorney's fees.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Faye M. Martin, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 30, 1992 and by the Respondent on September 21, 1992.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Barrett Day Securities, Inc.'s Motion to Preclude the tape recording is denied.
2. Respondent Barrett Day Securities, Inc. is liable and shall pay to the Claimant Dana Dodson the sum of \$2,545.89 in damages.
3. Respondent Barrett Day Securities, Inc. is liable and shall pay to the Claimant Dana Dodson simple interest at the legal statutory rate from October 29, 1990 to the date of payment of the award.
4. The parties shall bear their respective costs, including attorney's fees.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Dana Dodson shall be retained by the NASD, Inc. Respondent Barrett Day Securities, Inc. is liable and shall pay to the Claimant the sum of \$150.00, as reimbursement.

AFFIRMATION

I, FAYE M. MARTIN, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: May 17, 1993

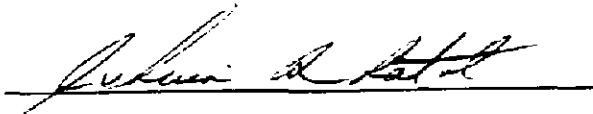
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STATE OF: *New York*

SS:

COUNTY OF: *Kings*

On this *10th* day of *MAY* 19*93*, before me personally appeared Faye M. Martin, Esq. to me known and known before me to be the individual described in and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.



ASHVIN R. PATEL
NOTARY PUBLIC, State of New York
No. 41-4799043
Qualified in Queens County
Certificate Filed in Kings County
Commission Expires September 30, 1994