

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Glenn Berlin and Martin Berlin

94-00317

Name of Respondents

Robert Todd Financial Corp.
Robert Bobak Fallah
Peter Laurence Cohen
Franco Peter Dortona
Todd Mitchell Spehler

REPRESENTATION

For Claimants Glenn and Martin Berlin ("Claimants") appeared Lawrence J. Bochat, Esq., of the law firm of Bochat & Keenan, P.C., located in Garden City, New York.

For Respondents Robert Fallah ("Fallah") and Peter Cohen ("Cohen") appeared Perri Beth Irvings from the law firm of Gersten, Savage, Kaplowitz & Curtin located in New York, New York.

For Respondent Todd Spehler ("Spehler") appeared Roger J. Schwarz, Esq., a sole practitioner located in New York, New York.

Respondent Franco Peter Dortona ("Dortona") appeared pro se.

Respondent Robert Todd Financial Corp. ("Robert Todd") did not enter an appearance at the hearing.

CASE INFORMATION

Statement of Claim filed: January 20, 1994.

Claimant's Submission Agreement signed on: January 24, 1994.

Joint Statement of Answer filed by Respondents Robert Todd, Fallah, Cohen and Dortona: May 26, 1994.

Respondent Robert Todd's Submission Agreement signed on: May 19, 1994.

Respondent Fallah's Submission Agreement signed on: May 19, 1994.

Respondent Cohen's Submission Agreement signed on: May 20, 1994.

Respondent Dortona's Submission Agreement signed on: June 20, 1994.

Statement of Answer of Respondent Spehler filed: May 20, 1994.

Respondent Spehler's Submission Agreement signed on: May 19, 1994.

HEARING INFORMATION

Hearing Dates/Sessions:	March 14, 1995	-	Two Sessions
	March 23, 1995	-	One Session
	March 27, 1995	-	One Session

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

CASE SUMMARY

Claimant Glenn Berlin alleged that he received money as a result of a personal injury settlement and that he was referred to Respondent Dortona, a broker for Respondent Robert Todd, by a co-worker. Claimant Glen Berlin maintained that he was an unsophisticated investor and that he explained to Respondent Dortona that one day he wanted to use the money to purchase a house and pay for tuition. Claimants alleged that Respondents pressed Claimants into investing in unsuitable securities which were inconsistent with Claimants' stated financial objectives; that Respondents made misrepresentations and omissions of material facts in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 and that Respondent Robert Todd failed to supervise its employees.

Claimants alleged that Respondent Dortona advised Glen Berlin to invest in Champions Sports, Inc. ("Champions"). Claimants further alleged that Respondent Dortona misrepresented that Champions was affiliated with the company that sells Champion Sportswear, but, in fact, the two companies were not related. Claimants further alleged that Respondent Dortona failed to notify Claimants that this company had lost money every year since its inception. In addition, Claimant alleged that the Respondent convinced him to purchase IVF America, but that Respondent did not provide Claimant with a prospectus until several months after the trades. Claimants alleged that this was a highly speculative stock and was unsuitable.

Claimants alleged that Respondent Dortona made unauthorized purchases. Claimants also alleged that each security purchased in their account was a "house stock" and that Dortona engaged in speculative trading in order to generate commissions for the Respondents. Claimants further alleged that Robert Todd manipulated the price of their house stocks by "packaging" the

initial public offerings of these securities. Claimants further alleged that Respondent Fallah, the President of Robert Todd, was also the President of Blue Chip Restaurant Corporation. Claimants alleged that Blue Chip had a business relationship with Champions and that this information was not disclosed to the Claimants.

In their Joint Statement of Answer Respondents Robert Todd, Fallah, Cohen and Dortona maintained that when Claimants opened their joint account their investment objectives were noted as growth and speculation and that Claimant Glen Berlin actively participated in the investments in his account. Respondents Robert Todd, Fallah, Cohen and Dortona further maintained that each transaction was made with Claimant Glen Berlin's express authority. Respondents Robert Todd, Fallah, Cohen and Dortona also maintained that they complied with the appropriate self-regulatory organizations' rules and regulations concerning the handling of Claimants' account.

Respondent Dortona denied that he made any of the misrepresentations alleged by Claimants. Dortona maintained that he believed that Champions had an optimistic future and maintained that Claimant Glen Berlin spoke with the President of Champions on a number of occasions.

As affirmative defenses, Respondents Robert Todd, Fallah, Cohen and Dortona maintained that Claimants expressly authorized, approved, ratified and participated in each and every transaction; that Claimants are estopped from asserting any claims because they failed to complain about any transactions in their account; and that Claimants failed to mitigate their damages. Respondents further maintained that Claimants failed to establish the necessary elements of fraud and that, at all times, they acted in accordance with the applicable laws, regulations and rules of conduct.

Respondent Spehler denied that he committed any of the wrongful acts alleged in the Statement of Claim. Respondent Spehler maintained that the allegations of fraud should be dismissed because they fail to establish any fraudulent intent, misrepresentations or omissions on his part. Respondent Spehler further maintained that he acted in accordance with all applicable laws, regulations and rules of conduct.

Respondent Spehler maintained that Claimants were presented with all material information pertaining to the nature, risks and benefits of the subject investments and any losses were due to Claimants' investment decisions. Respondent Spehler also maintained that Claimant was in complete control of their account and either directed or approved all investments and that Claimants failed to mitigate their damages.

RELIEF REQUESTED

Claimants request an award against Respondents jointly and severely in excess of \$45,000.00. Claimants further requested punitive damages in an amount to be determined by the arbitrators, reasonable attorneys' fees, interest, costs, disbursements and such other and further relief as the arbitrators may deem just and proper.

Respondents Robert Todd, Dortona, Fallah and Cohen requested that the Statement of Claim be dismissed in its entirety.

Respondent Spehler requested that the Statement of Claim be dismissed in its entirety and that he be granted such additional relief as the arbitrators may find just and proper.

OTHER ISSUES CONSIDERED & DECIDED

By letter dated February 15, 1995, the NASD was advised by the law firm of Gersten, Savage, Kaplowitz & Curtin that Respondent Robert Todd had ceased operations as a broker dealer and that the firm was withdrawing as counsel for Respondent Robert Todd. Also, by letter dated March 6, 1995, the law firm of Gersten, Savage Kaplowitz & Curtin advised the NASD that it was withdrawing as counsel to Respondent Dortona.

After all evidence had been presented to the arbitrators, Respondent Spehler made a motion to dismiss all claims against him. The panel considered this motion and ruled that it be granted.

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.

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. Respondents Robert Todd, Fallah, Cohen and Dortona be and hereby are jointly and severally liable and shall pay to the Claimants the sum of \$31,790.00.
2. Claimants' request for punitive damages be and hereby is denied.
3. Each party shall bear their respective costs, including attorneys' fees.
4. All other claims be and hereby are denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

$$4 \text{ sessions} \times \$400.00 = \$1,600.00$$

Forum fees assessed against:

1. Claimant be and hereby is liable for the sum of \$400.00 representing one-fourth of the total amount of forum fees assessed. Claimants previously paid a hearing session deposit of \$400.00 to the NASD, which shall be applied toward the forum fees assessed. Therefore, nothing is owed to the NASD by the Claimants.

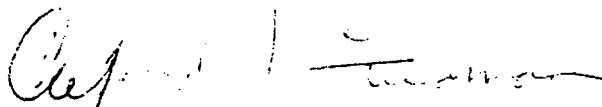
2. Respondents Robert Todd, Fallah, Cohen and Dortona be and hereby are jointly and severally liable and shall pay to the NASD the sum to \$1,200.00 representing three-fourths of the forum fees assessed.

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

ARBITRATORS' SIGNATURES

Robert D. Herschman, Esq.
Public Chairperson

Henry H. Balter
Public Arbitrator



Clifford J. Friedman
Industry Arbitrator

Date of decision: June 16, 1995

STATE OF:

COUNTY OF: ss:

On this day , 1995, before me personally appeared **Robert D. Herschman, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

COUNTY OF: ss:

On this day , 1995, before me personally appeared **Henry H. Balter** known and know to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF: NEW YORK

COUNTY OF: NEW YORK ss:

On this 15TH day JUNE, 1995, before me personally appeared **Clifford J. Friedman** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

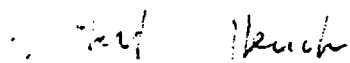


DAVID VEGA
Notary Public, State of New York
No. 03-4982074
Qualified in Bronx County
Commission Expires May 28, 1997
1997

2. Respondents Robert Todd, Fallah, Cohen and Dortona be and hereby are jointly and severally liable and shall pay to the NASD the sum to \$1,200.00 representing three-fourths of the forum fees assessed.

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

ARBITRATORS' SIGNATURES



Robert D. Herschman, Esq.
Public Chairperson

Henry H. Balter
Public Arbitrator

Clifford J. Friedman
Industry Arbitrator

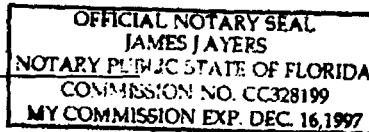
Date of decision: June 16, 1995

STATE OF: *FLORIDA*

COUNTY OF: *DADE* ss:

On this *12th* day *JUNE*, 1995, before me personally appeared **Robert D. Herschman, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

James J. Ayers



STATE OF:

COUNTY OF: ss:

On this day , 1995, before me personally appeared **Henry H. Balter** known and know to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

COUNTY OF: ss:

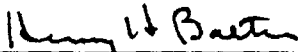
On this day , 1995, before me personally appeared **Clifford J. Friedman** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

2. Respondents Robert Todd, Fallah, Cohen and Dortona be and hereby are jointly and severally liable and shall pay to the NASD the sum to \$1,200.00 representing three-fourths of the forum fees assessed.

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

ARBITRATORS' SIGNATURES

Robert D. Herschman, Esq.
Public Chairperson



Henry H. Balter
Public Arbitrator

Clifford J. Friedman
Industry Arbitrator

Date of decision: June 16, 1995

STATE OF:

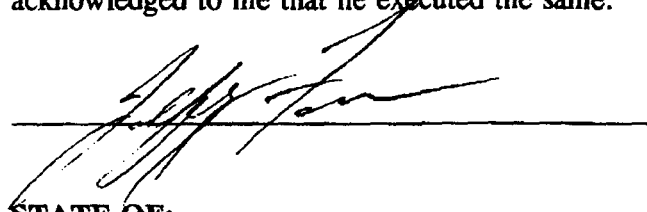
COUNTY OF: ss:

On this day , 1995, before me personally appeared **Robert D. Herschman, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF: *NEW YORK*

COUNTY OF: *KINGS* ss:

On this *14* day *JUNE*, 1995, before me personally appeared **Henry H. Balter** known and know to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



JEFFREY FERRARO
Notary Public, State of New York
No. 01FE5025737
Qualified in Kings County
Commission Expires April 4, 1996

STATE OF:

COUNTY OF: ss:

On this day , 1995, before me personally appeared **Clifford J. Friedman** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.
