

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Joe D. Laney

95-01570

Name of Respondents

Barry L. Schwartz  
Victor H. Palma, Jr.  
David Berger  
Barrett Day Securities, Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 18, 1995, Claimant Joe D. Laney, who appeared Pro Se, alleged that Respondents Barry L. Schwartz ("Schwartz"), Victor H. Palma, Jr., ("Palma"), David Berger ("Berger"), Barrett Day Securities, Inc. ("BDS"), handled his account at BDS in an improper manner. Claimant further alleged that Palma called him in July of 1994 and sold him 1,000 shares of Physicians Computer Network ("PCN") which he later sold for a profit. Claimant contended that Palma convinced him to use the proceeds from PCN and money from the sale of 100 Harley Davidson shares to purchase 1,000 shares of National Health & Safety ("NHS"). Claimant further contended that after these transactions were completed his account was missing some funds which he brought to the attention of Schwartz and Berger at BDS with no successful resolution. Claimant alleged that he has not been compensated for the lost funds and as a result of the above, he has suffered a loss for which the Respondents should be held liable.

Respondent Barry L. Schwartz, who appeared Pro Se, maintained that no trade for PCN ever took place in July of 1994. Respondent further maintained that Claimant had placed an order for 1,000 shares of PCN and later changed it to 700 which BDS accepted and executed on September 9, 1994, against normal industry practice. Respondent contended that he was not only was he not a principal at BDS during the time which Claimant alleges to have had conversations with him regarding the trades, but he never worked at the BDS branch in question. Respondent further contended that he was informed by others that the Claimant was informed that he was not a principle and as a result of the above, he should be removed from the matter and not be held liable.

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Respondent David Berger, who appeared Pro Se, maintained that BDS had all the supervisory personal in place. Respondent further maintained that he was only named because he was the President of the firm. Respondent contended that he never had any contact with the Claimant and believes it is improper for him to be named. Respondent further contended that he should be deleted as a Respondent in the matter, and that as a result of the above, he should not be held liable.

Respondent Barrett Day Securities, Inc., did not file an answer to the Statement of Claim.

Respondent Victor H. Palma, Jr., did not file an answer to the Statement of Claim.

#### **RELIEF REQUESTED**

Claimant Joe D. Laney, requested \$1,694.00 in actual damages plus punitive damages, interest and costs.

Respondent Barry L. Schwartz, requested that the claims of the Claimant be dismissed.

Respondent David Berger, requested that the claims of the Claimant be dismissed.

Respondent Barrett Day Securities, Inc., did not file an answer to the Statement of Claim.

Respondent Victor H. Palma, Jr., did not file and answer to the Statement of Claim.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

In accordance with Section 10 of the NASD Code of Arbitration Procedure the Respondents Barrett Day Securities, Inc., and Victor H. Palma, Jr., were served by regular mail and given an opportunity to respond which they failed to do. Service of notification of the arbitrator's identity was also effected as evidenced by a return receipt card signed and dated August 21, 1995 by Barrett Day Securities, Inc., and on August 7, by Victor H. Palma, Jr. which are on file with the NASD, Inc.

Pursuant to the By-laws of the NASD the arbitrator determined that Respondents Barrett Day Securities, Inc., and Victor H. Palma, Jr., had notice of the claim and were required to submit to this arbitration proceeding and are, therefore, bound by the arbitrator's ruling and determination.

**AWARD**

Pursuant to Section of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Gregory L. Ceshker, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 23, 1995, and not by Respondents Barry L. Schwartz, Victor H. Palma, Jr., David Berger and Barrett Day Securities, Inc., as required by Sections 8 and 10 of the NASD Code of Arbitration Procedure.

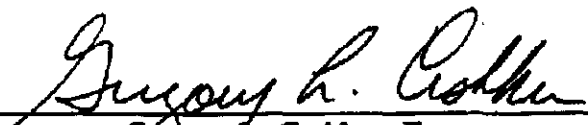
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Respondents Barry L. Schwartz, Victor H. Palma, Jr., David Berger and Barrett Day Securities, Inc., are jointly and severally liable and shall pay to the Claimants Joe D. Laney, \$1,556.80 in actual damages.
2. The Respondents Barry L. Schwartz, Victor H. Palma, Jr., David Berger and Barrett Day Securities, Inc., are jointly and severally liable and shall pay to the Claimant Joe D. Laney, interest at the rate of 6% per annum from September 9, 1994 to the date the award is paid.
3. The Respondent Barry L. Schwartz, is liable and shall pay to the Claimant Joe D. Laney, \$500.00 in punitive damages.
4. All other relief requests are denied.
5. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. The Respondents Barry L. Schwartz, Victor H. Palma, Jr., David Berger and Barrett Day Securities, Inc., are jointly and severally liable and shall pay to the Claimant Joe D. Laney, \$50.00 as reimbursement of the filing fee.

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**AFFIRMATION**

I, GREGORY L. CESHKER, 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.

  
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Gregory L. Ceshker, Esq.

DATE OF DECISION: October 3, 1995