

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Trillis Jacks,

Claimant,

and

No. 95-02763

Brokers Investment Corp.,  
Daniel H. Steinberg,  
Norman Shubert,  
Martin W. May, and  
Thomas Steven Shubert

Respondents.

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### **REPRESENTATION OF PARTIES**

Claimant Trillis Jacks was represented by Martin J. Gofberg of Securities Arbitration Centers, Inc. located in Fort Lauderdale, Florida.

Respondent Thomas Steven Shubert was represented in pleadings by Michael R. Matthias, Esquire of Matthias & Berg located in Los Angeles, California. Respondent Thomas Steven Shubert appeared pro se at the hearing.

Respondent Barry Keane was represented in pleadings by Edward T. Swanson, Esquire of Swanson & Meepos located in Santa Monica, California. Respondent Barry Keane entered into a settlement agreement with Claimant Trillis Jacks and was dismissed from this matter prior to hearing.

Respondents Brokers Investment Corp., Daniel H. Steinberg, Norman Shubert, and Martin W. May did not appear at the hearing and were not represented.

### **CASE INFORMATION**

Claimant Trillis Jacks' Statement of Claim was filed on or about June 8, 1995. Claimant Trillis Jacks' Submission Agreement was signed on May 11, 1995.

Respondent Thomas Steven Shubert's Statement of Answer was filed on or about August 14, 1995. NASD Regulation, Inc. Office of Dispute Resolution has no record of a signed agreement to submit to arbitration from Respondent Thomas Steven Shubert.

NASD Regulation, Inc. Office of Dispute Resolution has no record of Statement of Answers or signed agreements to submit to arbitration from Respondents Brokers Investment Corp., Daniel H. Steinberg, Norman Shubert, or Martin W. May.

Claimant's Post-Hearing Motion for the Arbitration Panel to Consider her Affidavit was filed on or about February 21, 1997.

Respondent Thomas Steven Shubert's Response thereto was filed on or about March 11, 1997.

### **HEARING INFORMATION**

No pre-hearing conferences were held.

The hearing was held on February 12, 1997 for two (2) sessions.

The hearing was held in Detroit, Michigan.

### **CASE SUMMARY**

Claimant Trillis Jacks alleged that Respondents Daniel H. Steinberg, Norman Shubert, Martin W. May, and Thomas Steven Shubert, who were principals and registered representatives of Respondent Brokers Investment Corp., (hereinafter collectively referred to as "Respondents") committed fraud and made omissions and misrepresentations of material facts. Claimant alleged that Respondents induced her into investing in limited partnerships by representing that she could earn returns in the 25%-40% range and that risk was not a factor. Claimant alleged in pleadings that she initially invested in Sovereign Equipment Fund, a limited partnership, for \$25,000 in September of 1990, and began to receive monthly payments on her investment, which were represented as disbursement checks. Claimant alleged in pleadings that these checks were part of a ponzi scheme to induce her to invest more money in different limited partnerships that Respondents were recommending. According to Claimant, she subsequently invested in the following limited partnerships: Trident Equipment Fund for \$25,000 in January of 1991; Telephone Lease Fund for \$25,000 in April of 1991; Telephone Lease Fund for \$25,000 in May of 1991; Switch Partners for \$50,000 in January of 1992; Gateway Partner for \$50,000 in May of 1992; Sovereign Asset Recovery Partnership for \$15,000 in July of 1992; and Automatic Cash Transactions Ltd. for \$12,500 in August of 1992. Claimant alleged in pleadings that Respondents never informed her of options to limit her losses or liquidating her accounts, but did continue to assure her that her investments were safe. Claimant alleged in pleadings that she had lost her entire investment to Respondents. Claimant made the following legal claims: (1) violations of § 5(a) and 5(c) of the Securities Act (15 U.S.C. §§ 77e(a)

and 77e(c); (2) breach of fiduciary duty; (3) violations of § 17(a) of the Securities Act (15 U.S.C. § 77q(a)), and § 10(b) of the Exchange Act (15 U.S.C. § 78j(b)) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5); (4) violations of § 15(c)(1) of the Exchange Act (15 U.S.C. § 780(c)(1)) and Rule 15c1-2 thereunder (17 C.F.R. §240.15c1-2); and (5) common law fraud.

Respondent Thomas Steven Shubert ("Shubert") denied the allegations set forth in the Statement of Claim. Respondent Shubert asserted that Claimant had not stated any factual or legal basis for his liability in this matter and that he never had any contact or involvement with Claimant or Claimant's investments. Respondent Shubert further denied that he had or exercised control or supervision of Brokers Investment Corp. with respect to any sales activities. Respondent Shubert also made the following defenses: Claimant represented that she was an accredited and sophisticated investor, with substantial net worth and was qualified to make the investments at issue here; Claimant received offering memoranda which fully, completely, and accurately disclosed all aspects of the investments made by Claimant, including risk; Claimant acknowledged that she received the offering memoranda, reviewed them carefully, and relied solely on them and her own investigations in making the decisions to invest; Claimant's claims are barred by the doctrines of waiver and estoppel; the investments Claimant made were properly registered or exempt from registration; Claimant's first, third, and fourth causes of action (as enumerated above), as well as common law claims, are barred by applicable statute of limitations; there is no private right of action under § 17(a) of the Securities Act of 1933 (15 U.S.C. § 77q(a)); there is no private right of action under § 15(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. § 780(c)(1)); and Thomas Shubert did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which liability is alleged against him.

#### **RELIEF REQUESTED**

Claimant Trillis Jacks requested an award for: actual damages in the amount of \$251,000; punitive damages in the amount of \$240,000 pursuant to common law fraud; and interest at 6% per annum.

Respondent Thomas Steven Shubert requested that the claims asserted against him be dismissed.

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

Claimant Trillis Jacks appeared through her representative, Martin Gofberg, but was not present in person at the hearing. Respondent Thomas Steven Shubert chose to appear at the hearing by telephone.

Respondent Thomas Steven Shubert did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

The undersigned arbitrators have determined that Respondents Brokers Investment Corp., Daniel H. Steinberg, Norman Shubert, or Martin W. May have not been properly served with the Statement of Claim pursuant to §10302 and §10314 of the NASD Code of Arbitration Procedure. The undersigned arbitrators have also determined that Respondents Brokers Investment Corp., Daniel H. Steinberg, Norman Shubert, or Martin W. May have not received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would not proceed with respect to these Respondents pursuant to §10318 of the Code.

Respondent Thomas Steven Shubert's Motion to Dismiss was denied without prejudice prior to hearing, but is granted in the final Award.

At the hearing in this matter, Respondent Thomas Steven Shubert moved to bar Claimant Trillis Jacks' exhibits. After careful consideration, the undersigned panel of arbitrators denied this motion.

Claimant's Post- Hearing Motion for the Arbitration Panel to Consider her Affidavit was denied.

The parties at the hearing 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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

### **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. That the Claimant Trillis Jacks failed to meet her burden of proof and therefore the Statement of Claim is hereby dismissed in its entirety with prejudice; and
2. That other than forum fees, which are addressed below, all other claims and requests for relief are hereby denied with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were two (2) hearing sessions x \$750 = \$1,500 in total forum fees. Pursuant to §10332(b) of the NASD Code of Arbitration Procedure (the "Code") a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant Trillis Jacks.

Respondent Thomas Steven Shubert is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$750.

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Concurring Arbitrator's Signatures

\s\ Gordon F. Knight  
Gordon F. Knight, Ph.D  
Public Arbitrator  
Presiding Chair

April 8, 1997  
Dated:

\s\ Benjamin A. Kerner  
Benjamin A. Kerner, Esquire  
Public Arbitrator  
Panelist

March 27, 1997  
Dated:

\s\ Mary Ann Golin  
Mary Ann Golin  
Industry Arbitrator  
Panelist

March 25, 1997  
Dated:

For NASD Regulation Use Only:  
Date Award Served on Parties: April 8, 1997