

# **NASD** Arbitration & Mediation

National Association of Securities Dealers, Inc. \* NASD Financial Center \* 33 Whitehall Street \* New York, NY 10004 \* Fax 212-858-4429  
Washington DC Satellite office at: 1735 K Street, NW - 10th Floor \* Washington, DC 20006 \* Fax 202-728-6952

## **N.A.S.D. AWARD**

### **NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimant

Riley Francisco

96-00202

Name of Respondents

Barron Chase Securities, Inc.  
David Kleber  
Robert Kirk  
Rodney Declay Sailor  
Joseph Cornwell

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### **CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on January 16, 1996, Claimant Riley Francisco, who appeared Pro Se, alleged that Respondents Barron Chase Securities, Inc. ("Baron Chase"), through its employees, Respondents David Kleber ("Kleber"), Robert Kirk ("Kirk"), Rodney Declay Sailor ("Sailor"), and Joseph Cornwell ("Cornwell"), failed to supervise his account, acted without a proper broker's license, and made unauthorized trades in his account. Claimant further alleged that Sailor contacted him in October 1994 to inform him that he was now working at Barron Chase and that Claimant should transfer his account there, which he did. Claimant contended that Sailor, without authorization, purchased shares of PJTV and VISTA 2000 for his account. Claimant further contended that when he received confirmation of these trades, he attempted to call Sailor numerous times, to no avail. Claimant alleged that after many calls to Barron Chase, he was finally contacted by Cornwell, who said that he would check on his account. Claimant further alleged that when he didn't hear from Cornwell, he contacted Kleber, who said that he should call Cornwell again to correct the unauthorized trades, and later stated that he would correct the trades himself. Claimant contended that he received confirmations in December showing new purchases, and he spoke again to Cornwell regarding his account. Claimant further contended that Cornwell became verbally abusive and hung up on him. Claimant alleged that he called Barron Chase again and was informed that "he should write it off as a loss and consider it a learning experience". Claimant further alleged that he then discovered that Sailor was an unlicensed broker. Claimant contended that Barron Chase failed to supervise its employees and his account and therefore, all Respondents should be held liable.

Respondent Barron Chase Securities, Inc., through its representative and in-house counsel, Eugene Michael Kennedy, Esq., located in Ft. Lauderdale, FL., maintained that the transactions at issue were effected with Claimant's knowledge, consent and at his express discretion. Barron Chase further maintained that Cornwell complied with Claimant's wishes and canceled all of the supposedly unauthorized transactions, and did in fact restore Claimant's account to the original position prior to Claimant's subsequent sell out and close of the account for cash some weeks later. Barron Chase contended that Claimant sets forth no basis for his "losses" or claimed "compensation", and did not willfully or knowingly participate in any violation of law, or act negligently regarding his account. Barron Chase further contended that at all times, it acted in good faith and without knowledge of any facts giving rise to its liability for the acts or omissions of its employees, and therefore, it should not be held liable.

Respondent David Kleber maintained that Claimant's Statement of Claim makes no allegation to support a cause of action against him, and therefore, he should not be held liable.

Respondent Robert Kirk maintained that Claimant makes no allegation which might support a cause of action and that his inclusion in this proceeding is arbitrary and frivolous, and therefore, he should not be held liable.

Respondent Rodney Declay Sailor failed to file an Answer to the Statement of Claim.

Respondent Joseph Cornwell failed to file an Answer to the Statement of Claim.

#### **RELIEF REQUESTED**

Claimant Riley Francisco, requested \$5,600.00 in actual damages, plus \$4,000.00 compensation for lost hours, frustration, deception and fraud.

Respondent Barron Chase Securities, Inc., requested that the claims of the Claimant be dismissed in their entirety.

Respondent David Kleber, requested that the claims of the Claimant be dismissed in their entirety.

Respondent Rodney Declay Sailor failed to file an Answer to the Statement of Claim.

Respondent Joseph Cornwell failed to file an Answer to the Statement of Claim.

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

In accordance with Section 13 of the NASD Code of Arbitration Procedure, the Respondent Rodney Declay Sailor, was served by regular mail and given an opportunity to respond, which he failed to do. In addition, service of an overdue answer notice and notification of the arbitrator's identity was effected, as evidenced by the signed return receipt card on file at the NASD.

Pursuant to the By-laws of the NASD, the Arbitrator determined that Respondent Rodney Declay Sailor, had notice of the claim, and was required to submit to this arbitration proceeding; and is, therefore, bound by the arbitrator's ruling and determination.

In accordance with Section 13 of the NASD Code of Arbitration Procedure, the Respondent Joseph Cornwell, was served by regular mail and given an opportunity to respond, which he failed to do. In addition, service of an overdue answer notice and notification of the arbitrator's identity was effected, as evidenced by the signed return receipt card on file at the NASD.

Pursuant to the By-laws of the NASD, the Arbitrator determined that Respondent Joseph Cornwell, had notice of the claim, and was required to submit to this arbitration proceeding; and is, therefore, bound by the arbitrator's ruling and determination.

### **AWARD**

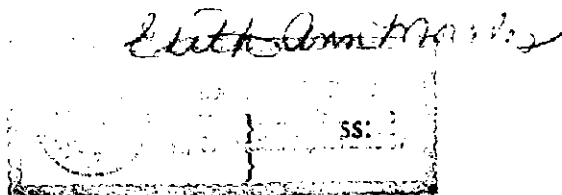
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Theodore E. Davis, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Riley Francisco, on January 11, 1996, and by the Respondents David Kleber, Robert Kirk, and Barron Chase Securities, Inc., on April 29, 1996, and not by Respondents Rodney DeClay Sailor and Joseph Cornwell, as required by Sections 12 and 13 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. Respondents Barron Chase Securities, Inc., David Kleber, Robert Kirk, Rodney DeClay Sailor, and Joseph Cornwell are jointly and severally liable and shall pay to the Claimant Riley Francisco, \$2,000.00 in actual damages.
2. All other relief requests are denied.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Riley Francisco, shall be retained by the NASD, Inc. Respondents Barron Chase Securities, Inc., David Kleber, Robert Kirk, Rodney DeClay Sailor, and Joseph Cornwell, are liable and shall pay to the Claimant Riley Francisco, \$150.00, as reimbursement of the filing fee.

**AFFIRMATION**

STATE OF Illinois



COUNTY OF Harris

I, Theodore S. Davis, 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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Signature of Arbitrator

DATE OF DECISION: May 29, 1996