

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Samuel S. Dayan, D.D.S., and  
Sharona Dayan, D.D.S.

NASD Arbitration

No. 96-00876

Name of Respondent(s)

Toluca Pacific Securities Corporation  
Harold S. Minsky

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REPRESENTATION

For Claimants: Michael R. Simmonds, Esq., Wineberg, Simmonds &  
Narita, San Francisco, California

For Respondents: Neville L. Johnson, Esq. and Herman Kamrowski,  
Jr., Esq., Neville L. Johnson & Associates, Los Angeles, California

CASE INFORMATION

Statement of Claim filed: February 26, 1996

Supplement to Statement of Claim filed: March 5, 1996

Claimants' Submission Agreements signed as follows:

Sharona Dayan, D.D.S.: January 30, 1996

Samuel S. Dayan, D.D.S.: February 15, 1996

Statement of Answer filed by Respondent Harold Minsky: August 27,  
1996

Respondents' Submission Agreements signed as follows:

Harold S. Minsky: August 20, 1996

Toluca Pacific Securities Corporation: September 13, 1996

#### HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s): September 24, 1996 (two sessions)  
September 25, 1996 (two sessions)

Hearing Location: San Francisco, California

#### CASE SUMMARY

Referencing their investments in various securities, Claimants alleged that Respondents, through false representations, unfounded and unsuitable recommendations, unauthorized trading, and ongoing attempts to conceal their own misfeasance, breached their fiduciary duty, causing Claimants to suffer trading losses of at least \$130,110.00. Claimants further alleged that in breaching their fiduciary duties, Respondents acted with oppression, fraud and malice, entitling Claimants to an award of exemplary damages in an amount deemed appropriate by the panel. Claimants further alleged that Respondents made fraudulent representations and omissions; that Respondents violated the requisite standard of care for members of the National Association of Securities Dealers, Inc. (NASD), as set forth in securities industry rules and regulations; that Respondents breached the covenant of good faith and fair dealing; and that Respondents have willfully or negligently inflicted severe emotional distress upon Dr. Dayan.

Respondents denied Claimants' allegations of wrongdoing and denied any liability to Claimants. Respondents alleged that Mr. Minsky never made any false representations, misrepresentations, never made unauthorized trades, and never attempted to conceal misfeasance, as there was no misfeasance. Respondents further alleged that Minsky always acted with Dayan's approval, operated in accordance with regulations and in accordance with industry standards. Respondents further alleged that Dayan always made independent decisions; and that Dayan knew the risks of the stock market and was experienced with the industry. Respondents also asserted affirmative defenses.

In his Counterclaim, Respondent Minsky requested reimbursement for the monies he personally paid into Dayan's account and alleged that such payment was made based upon Dayan's fraud upon Minsky.

#### RELIEF REQUESTED

Claimants requested:

1. Trading losses in the amount of at least \$130,110.00;
2. Interest on Claimants' trading losses, at a rate and in an amount deemed appropriate by the panel;
3. Costs, including reasonable attorneys' fees;
4. On behalf of Dr. Dayan, only, damages for extreme emotional distress, including but not limited to: Dr. Dayan's actual medical expenses, in an amount to be proven at hearing; pain and suffering, in an amount deemed appropriate by the arbitrators; loss of profits and other damage to his dentistry practice, in excess of \$50,000.00, the exact amount to be proven at hearing; and
5. An award of exemplary damages.

Respondents requested dismissal of Claimants' claims. Respondent Minsky further requested reimbursement from the Claimants in the amount of \$9,292.75 in accordance with Minsky's allegation that he was wrongfully deprived of such amount; and requested interest plus profits made from Claimants' use of such amount. Respondent Minsky also requested punitive damages and attorneys' fees.

#### OTHER ISSUES CONSIDERED AND DECIDED

At the outset of the hearing, the panel of arbitrators heard and considered the positions of the parties relative to Claimants' Motion to Exclude Defenses and Evidence; and Respondent Toluca Pacific Securities Corporation's (Toluca) request to join Respondent Minsky's Answer to Claimants' Statement of Claim. The panel denied Claimants' Motion to Exclude Defenses and Evidence and granted Respondent Toluca's request to join Respondent Minsky's Answer.

The parties have agreed that the Award in this matter may be executed in either 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, the evidence presented at the hearing and post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The panel finds for Claimants and against Respondents Toluca Pacific Securities Corporation and Harold S. Minsky. Respondents are jointly and severally liable for and shall pay to Claimants the sum of \$116,145.22, inclusive of interest. Said sum represents the losses in the joint account at Toluca Pacific Securities Corporation and the account at Charles Schwab & Co., Inc. (except for losses from trades in Tridon Corporation).

2. Claimants' claim for exemplary damages are denied.

3. All claims with respect to Harold S. Minsky's Counterclaim, including the claim for punitive damages, are dismissed.

4. The parties shall each bear their respective costs including attorney's fees.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$750.00 hearing session deposit previously deposited by the Claimants. Forum fees are assessed against Respondents, jointly and severally, in the amount of \$3,000.00, calculated as follows: Four hearing sessions times \$750.00.

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

#### ARBITRATORS

| <u>Name</u>                  | <u>Public / Industry</u> |
|------------------------------|--------------------------|
| Theodore A. Griffinger, Esq. | Public Arbitrator        |
| Leba G. Wine, Esq.           | Public Arbitrator        |
| Terrence W. Dorsey           | Industry Arbitrator      |

Concurring Arbitrators' Signatures

  
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Theodore A. Griffinger, Esq.

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Leba G. Wine, Esq.

\_\_\_\_\_  
Terrence W. Dorsey

Date of Decision: \_\_\_\_\_

Date Served: 10-21-96

Concurring Arbitrators' Signatures

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Theodore A. Griffinger, Esq.

*Leba G. Wine, Esq.*  
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Leba G. Wine, Esq.

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Terrence W. Dorsey

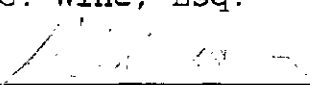
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Terrence W. Dorsey

Date Served: 10-21-96

Date of Decision: 10 " 56