

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

Fred and Lorraine Jackson, (Claimants) vs. May Davis Group, Inc., Owen A. May, Joseph Crescenzi, Jr., and Kevin L. Maldonado, (Respondents)

Case Number: 99-00422

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants, Fred Jackson ("F. Jackson") and Lorraine Jackson ("L. Jackson"), hereinafter collectively referred to as "Claimants": Steven B. Caruso, Esq., Maddox, Koeller, Hargett & Caruso, New York, NY.

Respondents, May Davis Group, Inc. ("May Davis"), Owen A. May ("May"), and Joseph Crescenzi ("Crescenzi"): Eden L. Rohrer, Esq., Gersten, Savage & Kaplowitz, LLP, New York, NY.

Respondent, Kevin L. Maldonado ("Maldonado"): Brian Reis, Esq., Brian Reis & Associates, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: January 29, 1999.

Claimants signed the Uniform Submission Agreement: January 28, 1999.

Statement of Answer filed by May Davis, May, and Crescenzi on or about: April 15, 1999.

Statement of Answer filed by Maldonado on or about: May 19, 1999.

May Davis, May, Crescenzi, and Maldonado did not sign Uniform Submission Agreements.

### CASE SUMMARY

Claimants alleged that Respondents engaged in high pressure and boiler room sales tactics, excessive and unsuitable trading activities, improper utilization of margin capabilities, and misrepresentation and/or omission of material facts. Claimants asserted the following causes of action: violation of Sections 10(b), 20(A) and Rule 10b-5 of the Securities Exchange Act of 1934; common law fraud; negligence; breach of fiduciary duty; constructive fraud; breach of contract; respondeat superior; violation of NASD Conduct Rules 2110, 2120, 2310, and 3010; and violation of Section 349 of the New York State General Business Laws.

Unless specifically admitted in their Answer, May Davis, May, and Crescenzi denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim and each and every cause of action therein fails to state a cause of action upon which relief can be granted; all risks inherent in investing in the securities markets and in the specific investments purchased were fully explained to Claimants and they knowingly, willingly, and voluntarily assumed the risks of investing in the market; Respondents discharged their responsibilities in a professional and ethical manner and their actions were within the parameters of accepted brokerage procedure and all exchange and governmental regulations; Respondents acted in good faith and exercised at least the degree of care, diligence, and skill which ordinarily prudent men and women would exercise in similar circumstances and like positions; Claimants' comparative fault, lack of diligence, and failure to conduct their financial affairs reasonably and responsibly bars any recovery of damages herein; the damages allegedly suffered by Claimants have no causal relationship with any act committed by or legally attributed to Respondents; the purported wrongdoing on the part of Respondents was not the proximate cause of losses for which Claimants seek recovery; Claimants have failed to state the details of fraud with particularity; Respondents owed no fiduciary duty to Claimants; and Claimants are barred by the doctrines of ratification, waiver, and estoppel.

Unless specifically admitted in his Answer, Maldonado denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants authorized and directed each transaction executed in their account and knew the risks and potential rewards associated with these investments; Claimants' losses were due to no wrongdoing whatsoever on behalf of Maldonado; Claimants fail to meet their burden of pleading fraud with the particularity necessary according to law; and Claimants are not entitled to punitive damages or attorneys' fees given the law and facts involved herein.

### **RELIEF REQUESTED**

Claimants requested: (1) compensatory damages: \$82,528.00 or such other amount as may be determined at the hearing; (2) lost interest/lost appreciation: unspecified; (3) reimbursement of costs and attorneys' fees: unspecified; (4) reimbursement of filing fees & hearing deposits: \$650.00; (5) assessment of forum fees solely against Respondents: unspecified; and (6) punitive damages: unspecified.

May Davis, May, and Crescenzi requested that the Panel dismiss the Statement of Claim in its entirety as against them and award such costs to the Respondents as are just and proper, including attorneys' fees and the costs of this arbitration.

Maldonado requested that all claims for relief be denied.

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

May Davis, May, Crescenzi, and Maldonado did not file with the NASD Regulation, Inc. Office of Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are hereby denied in their entirety.
2. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:  
Initial claim filing fee = \$ 150.00

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, May Davis Group, Inc. is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$300.00	= \$ 300.00
Pre-hearing conference: February 18, 2000 1 session	

One (1) Pre-hearing session with Panel x \$500.00	= \$ 500.00
Pre-hearing conference: November 18, 1999 1 session	

Six (6) Hearing sessions x \$500.00	= \$3,000.00
Hearing Dates: March 22, 2000 2 sessions	
March 23, 2000 2 sessions	
June 1, 2000 2 sessions	

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Total Forum Fees	= \$3,800.00
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1. The Panel has assessed \$1,900.00 of the forum fees against Claimant.
2. The Panel has assessed \$1,900.00 of the forum fees against May Davis.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimants, requested tapes, \$90.00.

**Fee Summary**

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 150.00
Forum Fees	= \$1,900.00
<u>Administrative Costs</u>	= \$ 90.00
Total Fees	= \$2,140.00
<u>Less payments</u>	= \$ 740.00
Balance Due NASD Regulation, Inc.	= \$1,400.00

2. May Davis be and hereby is solely liable for:

Member Fees	= \$3,100.00
<u>Forum Fees</u>	= \$1,900.00
Total Fees	= \$5,000.00
<u>Less payments</u>	= \$1,600.00
Balance Due NASD Regulation, Inc.	= \$3,400.00

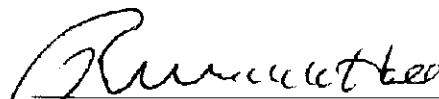
All balances are due and payable to NASD Regulation, Inc.

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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Hugh N. Fryer, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date



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Richard E. Hall  
Public Arbitrator

6-15-00

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Signature Date

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Thomas J. Hanrahan, Esq.  
Industry Arbitrator

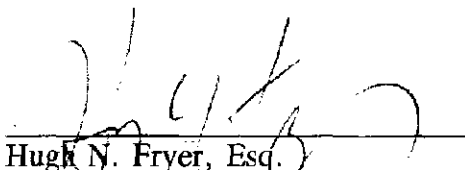
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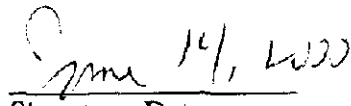
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Date of Service (For NASD office use only)

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Hugh N. Fryer, Esq.  
Public Arbitrator, Presiding Chair

  
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Signature Date

\_\_\_\_\_  
Richard E. Hall  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Thomas J. Hanrahan, Esq.  
Industry Arbitrator

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Hugh N. Fryer, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

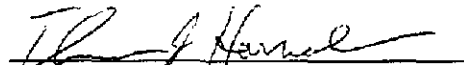
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Richard E. Hall  
Public Arbitrator

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Signature Date

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Thomas J. Hanrahan, Esq.  
Industry Arbitrator

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6/16/00  
Signature Date

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June 29, 2000  
Date of Service (For NASD office use only)