

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimants

Jenifer M. Robinson, Individually and as Executrix of the  
Estate of Robert V. Robinson

Case No. 99-04441 (Master Case)

Name of Respondent

First Allied Securities, Inc.

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In the Matter of the Arbitration Between

Name of Claimant

Mildred H. Beltz

Case No. 99-03828  
(Subordinate Case)

Name of Respondent

First Allied Securities, Inc.

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In the Matter of the Arbitration Between

Name of Claimants

David Hickey and Jean Hickey

Case No. 99-04435  
(Subordinate Case)

Name of Respondent

First Allied Securities, Inc.

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In the Matter of the Arbitration Between

Name of Claimants

David L. Hickey and Kelly L. Ghani

Case No. 99-04436  
(Subordinate Case)

Name of Respondent

First Allied Securities, Inc.

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In the Matter of the Arbitration Between

Name of Claimant

William E. Daley

Case No. 99-04437  
(Subordinate Case)

Name of Respondent

First Allied Securities, Inc.

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In the Matter of the Arbitration Between

Name of Claimant

Walter Smorawski

Case No. 99-04438  
(Subordinate Case)

Name of Respondent

First Allied Securities, Inc.

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In the Matter of the Arbitration Between

Name of Claimant

Nancy E. Goerlich

Case No. 99-04439  
(Subordinate Case)

Name of Respondent

First Allied Securities, Inc.

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In the Matter of the Arbitration Between

Name of Claimant

Harold A. Nuttal

Case No. 99-04440  
(Subordinate Case)

Name of Respondent

First Allied Securities, Inc.

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In the Matter of the Arbitration Between

Name of Claimant

Lilley A. Daley

Case No. 99-04444  
(Subordinate Case)

Name of Respondent

First Allied Securities, Inc.

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In the Matter of the Arbitration Between

Name of Claimant

Dorothy M. Park

Case No. 99-04445  
(Subordinate Case)

Name of Respondent

First Allied Securities, Inc.

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In the Matter of the Arbitration Between

Name of Claimants

Marie K. Perry

Case No. 99-04446  
(Subordinate Case)

Name of Respondent

First Allied Securities, Inc.

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In the Matter of the Arbitration Between

Name of Claimant

Sue M. Camp

Case No. 99-04447  
(Subordinate Case)

Name of Respondent

First Allied Securities, Inc.

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In the Matter of the Arbitration Between

Name of Claimant

Nancy L. Moore Purcell

Case No. 00-03045  
(Subordinate Case)

Name of Respondent

First Allied Securities, Inc.

Hearing Site: Buffalo, New York

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### **REPRESENTATION OF PARTIES**

Claimants Jenifer M. Robinson, Estate of Robert V. Robinson, Mildred H. Beltz, David Hickey and Jean Hickey, David L. Hickey and Kelly L. Ghani, William E. Daley, Walter Smorawski, Nancy E. Goerlich, Harold A. Nuttal, Lilly A. Daley, Dorothy M. Park, Marie K. Perry, Sue M. Camp and Nancy L. Moore Purcell hereinafter collectively referred to as "Claimants" were represented by Tybe A. Brett, Esq. of the law firm of Picadio McCall Miller & Norton, Pittsburgh, PA and Mary Speedy Hajdu, Esq. of the law firm of Burgett & Robbins, Jamestown, NY.

Respondent, First Allied Securities, Inc., was represented by John Bersin, Esq., First Allied Securities, Inc., New York, NY.

### **CASE INFORMATION**

Claimants Jenifer M. Robinson and Estate of Robert V. Robinson ("The Robinsons")  
Statement of Claim filed on or about: September 27, 1999  
Robert V. Robinson signed a Uniform Submission Agreement on September 15, 1998 and  
Jenifer Robinson signed a the Uniform Submission Agreement as the representative on  
Robert V. Robinson's estate on: December 17, 1999  
Statement of Answer filed by Respondent on or about: March 21, 2000  
Respondent did not sign a Uniform Submission Agreement.

Mildred H. Beltz's ("Beltz") Statement of Claim filed on or about: August 19, 1999  
Beltz signed the Uniform Submission Agreement: August 18, 1999  
Statement of Answer filed by Respondent, on or about: November 29, 1999  
Respondent did not sign a Uniform Submission Agreement

David L. and Jean M. Hickey ("The Hickeys") Statement of Claim filed on or about: September 28, 1999  
The Hickeys' signed the Uniform Submission Agreement: September 3, 1999  
Statement of Answer filed by Respondent on or about: February 4, 2000  
Respondent signed the Uniform Submission Agreement: November 30, 2000

David L. Hickey ("Hickey") and Kelly L. Ghani's ("Ghani") Statement of Claim filed on or about: September 28, 1999  
Hickey and Ghani signed the Uniform Submission Agreement: September 3, 1999  
Statement of Answer filed by Respondent on or about: February 4, 2000  
Respondent signed the Uniform Submission Agreement: November 30, 2000

William E. Daley ("Daley") Statement of Claim filed on or about: September 28, 1999  
Daley signed his Uniform Submission Agreement: September 28, 1999

Walter Smorawski ("Smorawski") Statement of Claim filed on or about: September 28, 1999  
Smorawski signed his Uniform Submission Agreement: September 10, 1999  
Statement of Answer filed by Respondent on or about: February 3, 2000  
Respondent signed the Uniform Submission Agreement: November 30, 2000

Nancy E. Goerlich ("Goerlich") Statement of Claim filed on or about: September 28, 1999  
Goerlich signed her Uniform Submission Agreement: December 6, 1999

Harold A. Nuttall ("Nuttall") Statement of Claim filed on or about: September 28, 1999  
Nuttall signed his Uniform Submission Agreement: September 3, 1999

Lilley A. Daley ("L. Daley") Statement of Claim filed on or about: September 28, 1999  
William E. Daley for L. Daley, as power of attorney signed the Uniform Submission Agreement: September 28, 1999

Dorothea M. Park ("Park") Statement of Claim filed on or about: September 28, 1999  
Dorothea M. Park signed the Uniform Submission Agreement: August 27, 1999

Mary K. Perry ("Perry") Statement of Claim filed on or about: September 28, 1999  
Perry signed her Uniform Submission Agreement: September 3, 1999

Sue M. Camp ("Camp") Statement of Claim filed on or about: September 28, 1999  
Camp signed her Uniform Submission Agreement: September 3, 1999

Nancy L. Moore Purcell ("Purcell") Statement of Claim filed on or about: July 12, 2000  
Purcell filed an Amended Statement of Claim on or about: February 8, 2001  
Purcell signed her Uniform Submission Agreement: July 7, 2000  
Statement of Answer filed by Respondent on or about: September 25, 2000  
Respondent signed the Uniform Submission Agreement: October 6, 2000

Claimants The Robinsons, Beltz, The Hickeys, Hickey and Ghani, Daley, Smorawski, Goerlich, Nuttall, L. Daley, Park, Perry and Camp filed an Amended and Consolidated Statement of Claim on or about: December 28, 2000

Respondent filed an Answer to the Consolidated Action on or about: February 23, 2001

On June 17, 2001 by agreement of the parties counsel the Consolidated Claim was Reconsolidated to include the Claim of Purcell so that 12 other claims were consolidated with Robinson 99-04441 (Master Case).

### **CASE SUMMARY**

Claimants The Robinsons, Beltz, The Hickeys, Hickey and Ghani, Daley, Smorawski, Goerlich, Nuttall, L. Daley, Park, Perry and Camp and Purcell asserted the following causes of action: violations of federal and state securities acts; common law fraud, breach of fiduciary duty; gross negligence; and, violations of the Pennsylvania Consumer Protection Act. Claimants' alleged that the causes of action relate to, among other things, Respondent's representative, John J. McGarry's ("McGarry"), fraudulent scheme, which was uncovered by the Pennsylvania Securities Commission, to sell ELCOA Securities in violation of the Pennsylvania Securities Act of 1972. Claimants alleged that McGarry invested their funds in ELCOA Securities and then he fraudulently concealed from Claimants material information concerning ALCOA. Claimants maintained that Respondent is liable for all acts and conduct of and damages caused by McGarry under the doctrine of *respondeat superior*.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claims and asserted the following defenses: that Claimants' claims fails to state a claim for which relief may be granted; that, as a matter of law, Claimants are not entitled to the damages from Respondent, as McGarry was an independent contractor; that NASD Code of Arbitration Procedure ("Code") Rule 10304 bars certain of the claims; that the applicable state and federal statutes of limitation bar certain claims; that certain of these claims relate to purchases that were made when McGarry was not employed by Respondent; that many of these Claimants received distributions and interest for a period of years between 1988 and 1996, but have nevertheless included the total amount of their initial investments in their damage calculations; events occurred that were not caused by Respondent, which constitute superseding or intervening causes of some or all of the alleged losses of which Claimants complain; and certain Claimants were completely unknown to Respondent, and the law provides a safe harbor defense for broker-dealers in so-called "trading-away cases," wherein the broker dealer had no reason to suspect the existence of the client or the wrongful transaction.

### **RELIEF REQUESTED**

Claimants, at the hearing requested the following compensatory damages:

The Robinsons	Case 99-04441	35,593.86
Belz	Case 99-03828	28,198.78
The Hickeys	Case 99-04435	28,746.18
Hickey and Ghani	Case 99-04436	5,037.92
Daley	Case 99-04437	91,867.02
Smorawski	Case 99-04438	15,599.28
Goerlich	Case 99-04439	15,947.07
Nuttall	Case 99-04440	29,026.09
L. Daley	Case 99-04444	103,858.54

Park	Case 99-04445	84,203.90
Perry	Case 99-04446	86,322.09
Camp	Case 99-04447	88,511.65
Purcell	Case 00-03045	46,805.61
Total Amount		659,717.99

Claimants also requested treble damages under the Pennsylvania Consumer Protection Act, attorneys' fees and costs related to this arbitration.

Respondent requested an Award denying all claims asserted by Claimants, that all costs of this proceeding be assessed against Claimants, and all other and further relief as this Panel may deem just and equitable.

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

The Panel issued several rulings prior to the hearing.

Respondent had made a motion to sever that the panel denied. Claimants made a motion for partial summary judgment that the panel denied. That counsel for the parties and pursuant to Rule 10314(d)(4) of the Code agreed that the Purcell claim (00-03045) could be consolidated with the NASD Consolidated Case No. 99-04441. The Panel further ruled that portions of Respondent's Motion to Dismiss that related to Rule 10304 of the Code was denied on the ground that the disputes as articulated in the Statements of Claim on behalf of each Claimant were each comprised of a number of distinct claims which were to be treated individually. However, the panel determined that at the Hearings, no claims would be considered where six (6) years has elapsed from the occurrence or event giving rise to the act or dispute, claim or controversy. The Panel further ruled that the portion of said Motion to Dismiss that related to the Statute of Limitations was denied.

At the Hearing, Claimants withdrew all claims for punitive damages. Claimants' claim for compensatory damages, treble damages under the Pennsylvania Consumer Protection Act and claims for attorneys' fees remained

Respondent did not file with NASD Dispute Resolution, Inc. a properly executed submission in each and every claim that was consolidated for hearing but was required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

That the parties agreed that the arbitrators can sign a counterpart copy of the award.



### **AWARD**

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

1. Claimants' claims were denied in their entirety.
2. That the claims for treble damages and attorneys' fees are denied in their entirety.
3. That the parties shall bear their respective costs, except as Fees are specifically addressed below.
4. That any and all claims for relief not specifically addressed herein are denied in their entirety.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

The Robinsons	\$175
Belz	\$175
The Hickeys	\$175
Hickey and Ghani	\$ 75
Daley	\$300
Smorawski	\$125
Goerlich	\$125
Nuttall	\$125
L. Daley	\$300
Park	\$225
Perry	\$225
Camp	\$300
Purcell	\$225

**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, the member firm is a party

Case 99-044411 Member surcharge Pre-hearing process fee Hearing process fee	\$ 800 \$ 600 \$4,500
Case 99-03828 Member surcharge	\$ 800
Case 99-04435 Member surcharge	\$ 800
Case 99-04436 Member surcharge	\$ 300
Case 99-04437 Member surcharge	\$1,500
Case 99-04438 Member surcharge	\$ 400
Case 99-04439 Member surcharge	\$ 400
Case 99-04440 Member surcharge	\$ 400
Case 99-04444 Member surcharge	\$1,500
Case 99-04445 Member surcharge	\$1,000
Case 99-04446 Member surcharge	\$1,000

1 After the first 12 cases were filed the pre-hearing and the hearing processing fee were only assessed on the master case, based on the aggregate amount in the consolidated action. The Purcell Case, 00-03045, was consolidated with the other 12 claims after the assessment of the pre hearing processing fee.

Case 99-04447 Member surcharge	\$1,500
Case 00-03045 Member surcharge Pre-Hearing Processing Fee	\$1,000 \$ 600

**Forum Fees and Assessments**

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

*Three (3) Pre-hearing sessions with a single arbitrator x \$450 = \$ 1,350*

Pre-hearing conferences: April 30, 2001 1 session  
 May 25, 2001 1 session  
 June 7, 2001 1 session

*Two (2) Pre-hearing sessions with Panel x \$1,200 = \$ 2,400*

Pre-hearing conferences: December 20, 2000 1 session  
 February 20, 2001 1 session

*Nine (9) Hearing sessions x \$1,200 = \$10,800*

Hearing Date(s): July 30, 2001 2 sessions  
 July 31, 2001 2 sessions  
 August 1, 2001 2 sessions  
 August 2, 2001 2 sessions  
 August 3, 2001 1 session

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Total Forum Fees = \$14,550

The Panel has assessed forum fees in the amount of \$14,550 to Respondent.

**Fee Summary**

The Robinsons are assessed the following fees:	
Initial Filing Fee	= \$ 175
Total Fees	= \$ 175
Less payments	= \$ 675

Refund due to the Robinsons	= \$ 500
Respondent is assessed the following fees:	
Member Fees	= \$ 5,900
Forum Fees	= \$14,550
Total Fees	= \$20,450
Less payments	= \$ 7,600
Balance Due NASD Dispute Resolution, Inc.	= \$12,850
Belz is assessed the following fee:	
Initial Filing Fee	= \$ 175
Total Fees	= \$ 175
Less payments	= \$ 775
Refund due to Beltz	= \$ 600
Respondent is assessed the following fees:	
Member Fees	= \$ 800
Total Fees	= \$ 800
Less payments	= \$ 800
Balance Due NASD Dispute Resolution, Inc.	= \$ 0
The Hickeys	
Initial Filing Fee	= \$ 175
Total Fees	= \$ 175
Less payments	= \$ 625
Refund due to The Hickeys	= \$ 450
Respondent is assessed the following fee:	
Member Fees	= \$ 800
Total Fees	= \$ 800
Less payments	= \$ 800
Balance Due NASD Dispute Resolution, Inc.	= \$ 0

<b>Hickey and Ghani</b>		
Initial Filing Fee	= \$	75
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Total Fees	= \$	75
Less payments	= \$	325
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Refund due to Hickey and Ghani	= \$	250
<b>Respondent is assessed the following fee:</b>		
Member Fees	= \$	300
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Total Fees	= \$	300
Less payments	= \$	300
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Balance Due NASD Dispute Resolution, Inc.	= \$	0
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<b>Daley</b>		
Initial Filing Fee	= \$	300
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Total Fees	= \$	300
Less payments	= \$	1,425
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Refund due to Daley	= \$	1,125
<b>Respondent is assessed the following fee:</b>		
Member Fees	= \$	1,500
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Total Fees	= \$	1,500
Less payments	= \$	1,500
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Balance Due NASD Dispute Resolution, Inc.	= \$	0
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<b>Smorawski</b>		
Initial Filing Fee	= \$	125
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Total Fees	= \$	125
Less payments	= \$	575
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Refund due to Smorawski	= \$	450

Respondent is assessed the following fee:		
Member Fees	= \$	400
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Total Fees	= \$	400
Less payments	= \$	400
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Balance Due NASD Dispute Resolution, Inc.	= \$	0
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Goerlich		
Initial Filing Fee	= \$	125
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Total Fees	= \$	125
Less payments	= \$	575
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Refund due to Goerlich	= \$	450
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Respondent is assessed the following fee:		
Member Fees	= \$	400
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Total Fees	= \$	400
Less payments	= \$	400
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Balance Due NASD Dispute Resolution, Inc.	= \$	0
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Nuttall		
Initial Filing Fee	= \$	125
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Total Fees	= \$	125
Less payments	= \$	575
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Refund due to Nuttall	= \$	450
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Respondent is assessed the following fee:		
Member Fees	= \$	400
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Total Fees	= \$	400
Less payments	= \$	400
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Balance Due NASD Dispute Resolution, Inc.	= \$	0

L. Daley		
Initial Filing Fee	= \$	300
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Total Fees	= \$	300
Less payments	= \$	1,425
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Refund due to L. Daley	= \$	1,125
Respondent is assessed the following fee:		
Member Fees	= \$	1,500
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Total Fees	= \$	1,500
Less payments	= \$	1,500
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Balance Due NASD Dispute Resolution, Inc.	= \$	0
Park		
Initial Filing Fee	= \$	225
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Total Fees	= \$	225
Less payments	= \$	975
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Refund due to Park	= \$	750
Respondent is assessed the following fee:		
Member Fees	= \$	1,000
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Total Fees	= \$	1,000
Less payments	= \$	1,000
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Balance Due NASD Dispute Resolution, Inc.	= \$	0
Perry		
Initial Filing Fee	= \$	225
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Total Fees	= \$	225
Less payments	= \$	975
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Refund due to Perry	= \$	750
Respondent is assessed the following fees:		
Member Fees	= \$	1,000

Total Fees	= \$ 1,000
Less payments	= \$ 1,000
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Balance Due NASD Dispute Resolution, Inc.	= \$ 0
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Camp	
Initial Filing Fee	= \$ 300
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Total Fees	= \$ 300
Less payments	= \$ 1,425
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Refund Due to Camp	= \$ 1,125
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Respondent is assessed the following fee:	
Member Fees	= \$ 1,000
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Total Fees	= \$ 1,000
Less payments	= \$ 1,000
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Balance Due NASD Dispute Resolution, Inc.	= \$ 0
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Purcell	
Initial Filing Fee	= \$ 225
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Total Fees	= \$ 225
Less payments	= \$ 975
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Refund due to Purcell	= \$ 750
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Respondent is assessed the following fees:	
Member Fees	= \$ 1,600
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Total Fees	= \$ 1,600
Less payments	= \$ 1,600
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Balance Due NASD Dispute Resolution, Inc.	= \$ 0

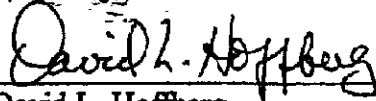
All balances are due to NASD Dispute Resolution, Inc.



**ARBITRATION PANEL**

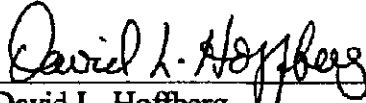
David L. Hoffberg	-	Public Arbitrator, Presiding Chairperson
Sandeep Singh	-	Public Arbitrator, Panelist
Vincent Micciche, Jr.	-	Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
David L. Hoffberg  
Public Arbitrator, Presiding Chairperson

9/19/01  
\_\_\_\_\_  
Signature Date

I, David L. Hoffberg, 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 is which is my award.

  
\_\_\_\_\_  
David L. Hoffberg

\_\_\_\_\_  
Sandeep Singh  
Public Arbitrator, Panelist

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

I, Sandeep Singh, 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 is which is my award.

\_\_\_\_\_  
Sandeep Singh

**ARBITRATION PANEL**

David L. Hoffberg	-	Public Arbitrator, Presiding Chairperson
Sandeep Singh	-	Public Arbitrator, Panelist
Vincent Micciche, Jr.	-	Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
David L. Hoffberg  
Public Arbitrator, Presiding Chairperson

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

I, David L. Hoffberg, 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 is which is my award.

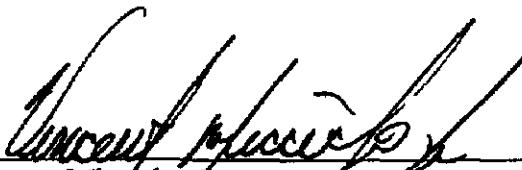
\_\_\_\_\_  
David L. Hoffberg

\_\_\_\_\_  
Sandeep Singh  
Public Arbitrator, Panelist

\_\_\_\_\_  
9 | 24 | 01  
Signature Date

I, Sandeep Singh, 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 is which is my award.

\_\_\_\_\_  
Sandeep Singh

  
\_\_\_\_\_  
Vincent Micciche, Jr.  
Non-Public Arbitrator, Panelist

9/13/2001  
\_\_\_\_\_  
Signature Date

I, Vincent Micciche, Jr., 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 is which is my award.

  
\_\_\_\_\_  
Vincent Micciche, Jr.

September 25, 2001  
\_\_\_\_\_  
Date of Service (For NASD-DR office use only)