

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

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In the Matter of the Arbitration Between:

Thomas McGovern, (Claimant) vs. J.W. Barclay and Co., Inc., and David Persaud,  
(Respondents)

Case Number: 99-05239

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Thomas McGovern, hereinafter referred to as "Claimant": Dan Druz, Esq., Attorney at Law, Manasquan, NJ.

Respondent, J.W. Barclay and Co., Inc., ("Barclay"), did not appear at the hearing.  
Previously represented by: Steven D. Toskes, Esq., Klayman, Lazarus & Toskes, PA, Boca Raton, FL.

Respondent, David Persaud, ("Persaud"), appeared *pro se*. Previously represented by: Steven D. Toskes, Esq., Klayman, Lazarus & Toskes, PA, Boca Raton, FL.

**CASE INFORMATION**

Statement of Claim filed on or about: November 22, 1999.  
Claimant signed the Uniform Submission Agreement: November 22, 1999.

Statement of Answer filed by Respondent, Barclay, on or about: May 24, 2000.  
Respondent, Barclay, signed the Uniform Submission Agreement: May 3, 2000.

Respondent, Persaud, did not file an answer or sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: churning of Claimant's account; unsuitable purchases and sale transactions generating extensive commissions; and, failing to discount commissions despite the high level of trading.

Unless specifically admitted in its Answer, Respondent Barclay denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant was a sophisticated investor and would not allow anyone to control or churn his investments; Claimant expressed his desire to employ a more aggressive trading strategy; Respondent did not

liquidate any of Claimant's conservative blue chip portfolio positions; Claimant was fully aware of and in fact controlled all of the trading activity in his account; and, Claimant was not entitled to discount commissions since Claimant benefited greatly by Respondent's service, far beyond the services provided at a discount brokerage firm.

### **RELIEF REQUESTED**

Claimant requested:

1. Compensatory damages in the amount of approximately \$225,000.00 consisting of disgorgement of commissions, margin interest charges and pre and post-judgment interest.
2. Punitive damages in the amount of \$50,000.00.

Respondents requested the dismissal of Claimant's claims in its entirety.

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

Upon review of the file and the representations made on behalf of the Claimant, the Panel determined that Respondent Barclay, had been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent, Persaud, did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having appeared and testified at the hearing, is 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. Respondent, J.W. Barclay & Co., Inc., be and hereby is liable for and shall pay to Claimant the sum of \$30,000.00 as compensatory damages;
2. Respondent, David Persaud, be and hereby is liable for and shall pay to Claimant the sum of \$10,000.00 as compensatory damages;
3. Claimant's request for punitive damages is denied; and,
4. All other requests for relief are hereby denied.

### **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:

Initial claim filing fee	= \$ 300.00
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#### **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 event giving rise to the dispute. In this matter, J.W. Barclay & Co., Inc., is a party.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,500.00

#### **Adjournment Fees**

Adjournment requested during these proceedings:

June 26 - 29, 2001, adjournment by Claimant	= \$ 1,125.00
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**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 arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$ 450.00	= \$ 450.00
Pre-hearing conference: December 15, 2000 1 session	
Three (3) Hearing sessions x \$ 1,125.00	= \$ 3,375.00
Hearing Dates: March 12, 2002 1 sessions	
March 18, 2002 2 sessions	
Total Forum Fees	= \$ 3,825.00

1. The Panel has assessed \$ 1,275.00 of the forum fees against Claimant.
2. The Panel has assessed \$ 2,550.00 of the forum fees jointly and severally against Respondents, Barclay and Persaud.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 1,125.00
<u>Forum Fees</u>	= \$ 1,275.00
Total Fees	= \$ 2,700.00
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,275.00

2. Respondent, Barclay, be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 4,600.00
Total Fees	= \$ 4,600.00
<u>Less payments</u>	= \$ 4,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

4. Respondents, Barclay and Persaud, be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 2,550.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,550.00

All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Khadijah B. Matin	-	Public Arbitrator, Presiding Chair
Kenneth Stewart	-	Public Arbitrator
Charles L. Henderson, Esq.	-	Industry Arbitrator

**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.

*Khadijah B. Matin*

Khadijah B. Matin  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Kenneth Stewart  
Public Arbitrator

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

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Charles L. Henderson, Esq.  
Industry Arbitrator

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

April 24, 2002  
Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.  
Arbitration No. 99-05239  
Award Page 7

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**ARBITRATION PANEL**


Khadijah B. Matin	-	Public Arbitrator, Presiding Chair
Kenneth Stewart	-	Public Arbitrator
Charles L. Henderson, Esq.	-	Industry Arbitrator

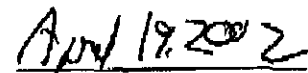
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Khadijah B. Matin  
Public Arbitrator, Presiding Chair

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

  
\_\_\_\_\_  
Kenneth Stewart  
Public Arbitrator

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

\_\_\_\_\_  
Charles L. Henderson, Esq.  
Industry Arbitrator

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

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