

**NASD Dispute Resolution, Inc.**

In Matter of the Arbitration Between

Name of Claimant

Rose Levitt

Case No. 00-01233

Names of Respondents

J. B. Hanauer & Co.  
Gregory Brooks

**REPRESENTATION OF PARTIES**

For Rose Levitt, hereinafter referred to as "Claimant": Jeffrey Erez, Esq. of Sonn & Associates, P.A., Fort Lauderdale, Florida.

For J.B. Hanauer & Co. ("J.B. Hanauer"): David L. Lichter, Esq. of J.B. Hanauer & Co., Miami, Florida.

For Gregory Brooks ("Brooks"): Samantha N. Tesser, Esq. of Atlas Pearlman, P.A., Fort Lauderdale, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: March 20, 2000.

Claimant signed the Uniform Submission Agreement on: March 17, 2000.

Statement of Answer filed by Respondent J.B. Hanauer on or about: May 22, 2000.

Respondent J.B. Hanauer's Uniform Submission Agreement signed on: April 3, 2000 by Gregg Plifka, Executive Vice President, on behalf of the firm.

Statement of Answer of Respondent Brooks filed on or about: June 1, 2000.

Respondent Brooks signed the Uniform Submission Agreement on: May 26, 2000.

Amended Statement of Claim filed on or about: July 7, 2000.

Respondent Hanauer's Answer to Amended Statement of Claim filed on or about: July 24, 2000.

Respondent Brook's Answer to Amended Statement of Claim filed on or about: November 8, 2000.

**CASE SUMMARY**

Claimant asserted the following causes of action: conversion; negligence; civil theft; violations of Section 517, Florida Statute; negligent supervision; and, breach of fiduciary duty. Further, Claimant alleged the following: On August 5, 1996, Respondent Brooks, a registered representative of J.B. Hanauer, purchased \$60,600.00 of California State Department Water Resource Central Valley Project 5.400% of 2012 bearer bonds (the "bearer bonds") for Claimant's account at J.B. Hanauer, without Claimant's authority.

Brooks arranged for the physical delivery of the bonds to Claimant in bearer form. Prior to the delivery of the bearer bonds to Claimant, Brooks called Claimant and told her that a package was being delivered to her, that the package was not for her, that she was not to open the package and that Brooks would be by to retrieve the package from Claimant. In late August, 1996, Claimant received the package, did not open it and handed it to Brooks at his request when he visited her at her home. Unbeknownst to Claimant, the package contained the bearer bonds. Brooks later gave the bearer bonds to Diane Vermeulen ("Vermeulen"), a former assistant of his at another brokerage firm who sold the bearer bonds and shared the proceeds with Brooks.

Respondent J.B. Hanauer denied the allegations of wrongdoing contained in the Statement of Claim and the Amended Statement of Claim and asserted the following: Hanauer took no position on whether Respondent Brooks stole the bearer bonds that were the subject of Claimant's Statement of Claim. Instead, assuming Brooks stole the securities, Brooks was not acting within the scope of his employment or within any type of "apparent authority" of J. B. Hanauer. J.B. Hanauer had proper supervisory procedures in place and exercised appropriate supervision over Respondent Brooks. In addition, there were no supervisory procedures that could have prevented the alleged theft of Claimant's securities from her home. Respondent J.B. Hanauer further asserted that Claimant was negligent in: i) handing over her securities to Brooks without opening the envelope containing the bonds or inquiring of its contents; ii) failing to contact the branch manager or other supervisory personnel at J.B. Hanauer to report Respondent Brooks' unusual conduct; and iii) failing to timely act following receipt of her monthly account statement and confirmation slip indicating that the bonds had been delivered.

Respondent Brooks denied the allegations of wrongdoing contained in the Statement of Claim and the Amended Statement of Claim and asserted the following: Respondent Brooks had authorization from Claimant to purchase the bearer bonds in August, 1996. Claimant received a confirmation, monthly account statement, and an overage check reflecting the transaction shortly after the purchase. Apparently, sometime thereafter, the bonds were misappropriated by Vermeulen, an employee of Schochet Securities, where Claimant maintained her account prior to J.B. Hanauer. The bonds were registered in December, 1996 with the state of California and Vermeulen's account and sold that same month. Vermeulen deposited the proceeds from the sale of the bonds into her Nations Bank account. Thereafter, Vermeulen ultimately withdrew the funds from her bank account between January and March, 1997 prior to her unexpected death in April, 1997. Further, Brooks asserted affirmative defenses including the following: failure to state a claim upon which relief can be granted; Claimant's damages, if any, were the result of a superceding, intervening act by Vermeulen or was caused or contributed to by conditions or events beyond the control of Brooks for which Brooks is not liable; Claimant was comparatively negligent; any losses sustained by Claimant were caused by her own actions or inactions; Claimant's claims are barred by waiver, ratification and estoppel; Claimant's claims under Chapter 517, Florida Statutes, are barred by the applicable statute of limitations; and, Claimant failed to mitigate her damages.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$181,800.00, exclusive of attorneys' fees, costs and interest.

Respondent J.B. Hanauer requested judgment in its favor on Claimant's claim under Section 517, Florida Securities based upon the applicable statutes of limitation, a dismissal of all claims against it, and an award of attorneys' fees and costs under Sections 517 and 772.11, Florida Statutes.

Respondent Brooks requested that the Arbitration Panel dismiss all claims against him or enter an award in his favor finding that no damages are due Claimant. Further, Brooks requested that all forum fees and costs be assessed against Claimant.

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

At the conclusion of Claimant's case in chief, Respondent Brooks moved for a Directed Verdict as to Count III (Chapter 517, Florida Statutes, securities fraud claim) to which Respondent Hanauer joined. Upon argument of counsel, the Arbitration Panel granted the Motion for Directed Verdict, based upon the applicable statute of limitations.

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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents J.B. Hanauer and Brooks are found liable, jointly and severally, and shall pay to Claimant the sum of \$30,000.00.
2. Respondent Brooks is found liable, individually, and shall pay to Claimant the sum of \$30,000.00.
3. All other requests for relief not specifically addressed herein are 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 events giving rise to the dispute. In this matter, the member firm is a party.

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

### **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 arbitrator(s), 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 date: February 28, 2001	1 session

One (1) Pre-hearing session with the Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference date: October 5, 2000	1 session

Six (6) Hearing sessions x \$1,125.00	= \$6,750.00
Hearing dates: March 6, 2001	2 sessions
March 7, 2001	2 sessions
March 8, 2001	2 sessions

Total Forum Fees	= \$8,325.00
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The Panel has assessed the total forum fees of \$8,325.00 jointly and severally to Respondents J.B. Hanauer and Brooks.

### **Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 300.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondent J.B. Hanauer be and hereby is solely liable for:

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

Respondents J.B. Hanauer and Brooks be and hereby are jointly and severally liable for:

Forum Fees	= \$8,325.00
Total Fees	= \$8,325.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$8,325.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Stuart M. Rapee, Esq.  
Public Arbitrator, Presiding Chair

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04/02/01  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Leonard G. Cohen  
Industry Arbitrator

\_\_\_\_\_  
04/04/01  
Signature Date


\_\_\_\_\_/s/\_\_\_\_\_  
Allan Jon Kretzmar  
Public Arbitrator

\_\_\_\_\_  
04/04/01  
Signature Date

\_\_\_\_\_  
April 6, 2001  
Date of Service (For NASD-DR office use only)

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

Concurring Arbitrators' Signatures

  
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Stuart M. Rapee, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Leonard G. Cohen  
Industry Arbitrator

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Signature Date

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Allan Jon Kretzmar  
Public Arbitrator

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Signature Date

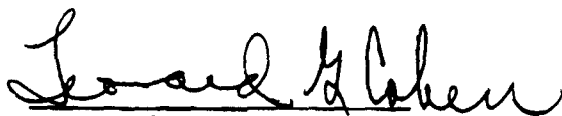
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Date of Service (For NASD-DR office use only)

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Concurring Arbitrators' Signatures

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Stuart M. Rapee, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

  
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Leonard G. Cohen  
Industry Arbitrator

4-4-01  
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Signature Date

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Allan Jon Kretzmar  
Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD-DR office use only)

Award Pays \$

All balances are payable to NASD Dispute Resolution, Inc. and are receipt of the Award by the parties.

Concurring Arbitrators' Signatures

Stuart M. Rapco, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Leonard G. Cohen  
Industry Arbitrator

Signature Date

  
Allan Jon Kroun  
Public Arbitrator

04/04/2001  
Signature Date

Date of Service (For NASD-DR office use only)