

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

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In the Matter of the Arbitration Between:

Randle E. Theobald, Dora Theobald, Laura "Jeanne" Blanchard, and Curtis J. Blanchard,  
Claimants v. BT Alex. Brown, Incorporated, nka DB Alex. Brown LLC, Douglas S. Boszhardt,  
and James E. Hulburd, Respondents

Case Number: 00-04930

Hearing Site: Salt Lake City, Utah

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**REPRESENTATION OF PARTIES**

For Claimants:

Julian D. Jensen, Esq.  
Craig Carman, Esq.  
Jensen, Duffin, Carman, Dibb & Jackson  
Salt Lake City, Utah

For Respondents:

Michael M. Gless, Esq.  
Keesal, Young & Logan PC  
Long Beach, California

**CASE INFORMATION**

Statement of Claim filed: October 31, 2000

Claimants Randle E. Theobald and Dora Theobald's Uniform Submission Agreement signed:  
October 12, 2000

Claimants Jeanne Blanchard and Curtis J. Blanchard's Uniform Submission Agreement signed:  
October 20, 2000

Joint Statement of Answer filed by Respondents DB Alex. Brown LLC, Douglas S. Boszhardt,  
and James E. Hulburd: January 12, 2001

Respondent DB Alex. Brown's Uniform Submission Agreement signed: January 12, 2001

Respondents Douglas S. Boszhardt and James E. Hulburd's Uniform Submission Agreement  
signed: none filed

### **CASE SUMMARY**

Claimants alleged the following causes of action with respect to investments in Remedy Corporation stock: failure to follow client instructions, margin account violations, and failure to recommend suitable investments.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

### **RELIEF REQUESTED**

Claimants requested \$2,160,000.00 in actual damages for failure to liquidate securities as directed plus \$1,491,306.00 to Randal Theobald, \$1,306,156.00 to Dora Theobald and \$1,314,956.00 to Curtis and Laura "Jeanne" Blanchard under suitability losses, treble damages pursuant to Utah Code Annotated Section 61-1-22(2), consequential damages arising from tax related losses, plus recovery of costs and attorney fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety plus costs and expenses.

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

Respondents Douglas S. Boszhardt and James E. Hulburd did not file with the NASD Dispute Resolution, Inc. properly executed submission agreements but are required to submit to arbitration pursuant to the Code of Arbitration Procedure 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 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, testimony, and evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent DB Alex. Brown LLC is liable to and shall pay Claimants
  - a) The sum of \$359,787.74 in compensatory damages;
  - b) Interest on the above amount at the rate of 10% pursuant to Utah Code Section 15-1-1 from 9/1/98 until paid;
  - c) The sum of \$2,500.00 for sanctions connected with granting of Claimants' Motion to Compel Discovery previously reserved; and
  - d) The sum of \$600.00 reimbursement for NASD Dispute Resolution, Inc. filing fees.
- 2) Claimants' claim for punitive damages is denied.
- 3) Except as noted above, each party shall bear its own costs, including attorney's fees.
- 4) All claims against Respondents Douglas S. Boszhardt, and James E. Hulburd are dismissed in their entirety.
- 5) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Douglas S. Boszhardt, and James E. Hulburd's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondents Douglas S. Boszhardt, and James E. Hulburd must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directives.
- 6) All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee

= \$ 600.00

### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm DB Alex. Brown LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 3,600.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 5,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 9,200.00</b>

### **Adjournment Fees**

The following adjournment fees are assessed:

Hearing Dates October 9, 2001 through October 15, 2001, adjournment requested by Claimants , fee assessed to Respondent DB Alex. Brown LLC	= \$ 1,200.00
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### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conference(s):    May 3, 2001                      1 session	
December 5, 2001                      1 Session	
(6) Hearing sessions @ \$1,200.00/session	= \$ 7,200.00
Hearings:                              April 16, 2002                      2 sessions	
April 17, 2002                      2 sessions	
April 18, 2002                      2 sessions	
<b>Total Forum Fees</b>	<b>= \$ 9,600.00</b>

The Panel assessed \$ 9,600.00 of the forum fees to Respondent DB Alex. Brown LLC.

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 600.00
<u>Less Payments</u>	<u>= \$(1,800.00)</u>
<b>Refund Due Claimants</b>	<b>= \$(1,200.00)</b>

2. Respondent DB Alex. Brown LLC is charged with the following fees and costs:

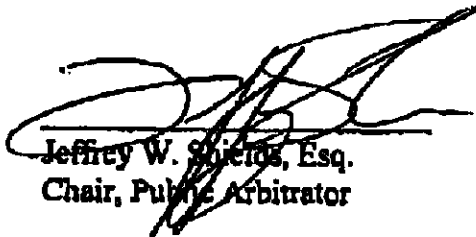
Member Fees	= \$ 9,200.00
Adjournment Fee	= \$ 1,200.00
<u>Forum Fees</u>	<u>= \$ 9,600.00</u>
<b>Total Forum Fees</b>	<b>= \$20,000.00</b>
<u>Less Payments</u>	<u>= \$(9,200.00)</u>
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$10,800.00</b>

All balances are payable to NASD Dispute Resolution, Inc. and are to be paid immediately upon the receipt of the award by the parties pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

<i>Jeffrey W. Shields, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Ross W. Cannon, Esq.</i>	-	<i>Public Arbitrator</i>
<i>E. Y. Bennion</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

  
Jeffrey W. Shields, Esq.  
Chair, Public Arbitrator

6/13/02  
Signature Date

\_\_\_\_\_  
Ross W. Cannon, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
E. Y. Bennion  
Industry/Non-Public Arbitrator

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

6/13/02  
Date of Service

NASD Dispute Resolution, Inc.  
Arbitration No. 00-04930  
Award Page 6 of 6


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<i>Ross W. Cannon, Esq.</i>	-	<i>Public Arbitrator</i>
<i>E. Y. Bennion</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

Jeffrey W. Shields, Esq.  
Chair, Public Arbitrator

Signature Date

  
Ross W. Cannon, Esq.  
Public Arbitrator

4/19/02  
Signature Date

E. Y. Bennion  
Industry/Non-Public Arbitrator

Signature Date

4/19/02  
Date of Service

ARBITRATION PANEL

Jeffrey W. Shields, Esq.

Ross W. Cannon, Esq.

E. Y. Bennion

Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

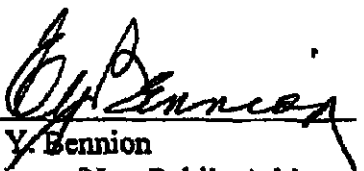
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Chair, Public Arbitrator

Signature Date

Ross W. Cannon, Esq.  
Public Arbitrator

Signature Date

✓   
E. Y. Bennion  
Industry/Non-Public Arbitrator

6/14/02 ✓  
Signature Date

6/14/02  
Date of Service