
Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

James M. Harris, Jr. (Claimant) v. HD Brous & Company, Alex Brown Incorporated and Joseph Jacoby (Respondents).

Case Number: 01-01374

Hearing Site: Houston, Texas

REPRESENTATION OF PARTIES

Claimant, James M. Harris, Jr. ("Mr. Harris") was represented by William S. Shepherd of the firm Shepherd & Smith, P.C. located in Houston, Texas.

Respondents, HD Brous & Co., Inc. ("H.D. Brous") and Alex Brown Incorporated ("Alex Brown") were represented by Keith Olin, Esq., of the firm Morgan, Lewis, & Bockius LLP, located in Miami, Florida.

Respondent, Joseph L. Jacoby ("Mr. Jacoby") was represented by Michael Utila, Esq., located in Brooklyn, New York.

CASE INFORMATION

Statement of Claim filed on or about: March 22, 2001.

Claimant signed the Uniform Submission Agreement:

Statement of Answer and Counterclaim filed by Respondents Brous and Alex Brown on or about: June 18, 2001.

Respondents Brous and Alex Brown signed the Uniform Submission Agreement on:

Statement of Answer filed by Respondent Mr. Jacoby on or about: June 20, 2001

Uniform Submission Agreement signed by Mr. Jacoby on:

CASE SUMMARY

Claimant, Mr. Harris alleged the following causes of action: Breach of Contract, Breach of Fiduciary Duty, Breach of Warranty, and Promissory Estoppel.

Claimant's causes of action relate to unsuitable trading of common stock.

Unless specifically admitted in the Statement of Answer, and Counterclaim Respondents/Counterclaimants Brous, and Alex Brown denied the allegations set forth in the Statement of Claims and asserted the following affirmative defenses and Counterclaims:

1. The claims are barred in whole or in part by the statute of limitations;
2. The claims are barred by principles of waiver, laches, estoppel and ratification;
3. The claims are barred by the parties settlement agreement;
4. The claims previously were dismissed with prejudice;
5. The claims are barred, in whole or in part, by claimant's contributory negligence or comparative negligence;
6. The claims and each of them fail to state a claim upon which relief may be granted;
7. Claimant failed to mitigate his alleged damages;
8. Claimant's losses were caused by market conditions for which Brous cannot be held responsible;
9. Claimants/ Counter Respondents Breached a contract entered into with Respondents/Counterclaimants when they failed to execute the General Release and Settlement agreement allegedly agreed to by the parties on or about November 10, 2001.

Unless specifically admitted in its Answer, Respondent Jacoby denied the allegations made in the Statement of Claim and asserted the following affirmative defenses:

1. Respondent Jacoby did not misrepresented the offerings solicited to the Claimant in any manner;
2. The Claimant has failed to plead fraud with the requisite degree of specificity;
3. By his own admission, the Claimant authorized and directed the execution of all transactions in his securities account;
4. The Claimant had knowledge and assumed the risks incident to investing in the securities market;
5. The Claimant's conduct, at a minimum, ratified the trading which occurred in his account;
6. Assuming that Claimant suffered damages, which is denied, such damages were caused or contributed to by persons, conditions or events beyond the control of the Respondent and the Respondent is not liable;
7. In discharging his duties to the Claimant, Respondent acted in good faith and exercised at least that degree of care, diligence and skill which ordinary prudent persons would exercise in similar circumstances and like positions;
8. The Claimant failed to use diligence with respect to the transactions and acts complained of and accordingly is barred from asserting or recovering for any such transactions or acts;
9. The alleged losses of the Claimant were proximately caused by his own negligence in relation to the transactions complained of and therefore the Claimant is precluded from any recovery herein;
10. The Claimant is not entitled to attorney's fees. Attorney's fees are substantive and not procedural in nature.

11. The Claimant's allegation that Respondent Jacoby breached his fiduciary duties to him must fail as well, since Claimant's relationship was that of ordinary broker to clients. A fiduciary relationship does not develop as a result of this relationship;
12. Respondent Mr. Jacoby denies that he had full, complete, ongoing and contemporaneous knowledge of all the acts complained of by the Claimant;
13. The Claimant has failed to state a claim for unsuitability;
14. The Claimant's demand for damages are speculative, improper as a matter of law and without foundation as a matter of fact; and,
15. The Statement of Claim is insufficient as to any cause of action against Respondent Mr. Jacoby.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$ 50,000.00
Punitive Damages	\$ Unspecified
Interest	\$ Unspecified
Attorneys' Fees	\$ Unspecified
Other Costs	\$ Unspecified

Respondents/ Counterclaimants requested:

Compensatory Damages	\$ Unspecified
Punitive Damages	\$ Unspecified
Interest	\$ Unspecified
Attorneys' Fees	\$ Unspecified
Other Costs	\$ Unspecified

Non-monetary Relief: That the claims against them be dismissed in their entirety and that the Claimants/Counter Respondents be ordered to execute the Settlement Agreement.

OTHER ISSUES CONSIDERED AND DECIDED

On or about, November of 2000, Respondents HD Brous & Co., Inc., Alex Brown and Joseph Jacoby and Claimant, James M. Harris, agreed to settle this matter for the sum of \$15,000.00. In exchange, Claimant allegedly agreed to provide Respondents with a general release and dismiss the action against them with prejudice.

In June 18, 2001, Respondents Brous, Alex Brown and Mr. Jacoby filed a Counterclaim against Claimant for failure to execute the Settlement Agreement. Respondents alleged that the settlement was never completed because of a disagreement over the form and content of the General Release. Respondents proposed that the matter be referred to the NASD Dispute Resolution Arbitrator, Bertrand M. Moser, Esq., who presided over the underlying cause of action. All parties subsequently submitted the proposed language to

be contained in the Release. On August 27, 2001, Arbitrator Bertrand Moser, Esq. made a ruling regarding the Release and Settlement Agreement. On October 9, 2001, after considering briefing from the parties, Arbitrator Moser ruled on the outstanding issue of attorneys' fees.

AWARD

After considering the pleadings and the evidence submitted by the parties the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, HD Brous & Co., Inc., Joseph L. Jacoby and Alex Brown Inc., are jointly and severally liable and shall pay to the Claimant, James M. Harris the sum of \$15,000.00 (Fifteen Thousand Dollars) as stipulated in the settlement agreement;
2. Respondents, HD Brous & Co., Inc., Joseph L. Jacoby and Alex. Brown Inc., are jointly and severally liable and shall pay to the Claimant, James M. Harris, Interest in the amount of \$1,500.00 (Fifteen Hundred Dollars);
3. Respondents, HD Brous & Co., Inc., Joseph L. Jacoby and Alex Brown Inc. are jointly and severally liable and shall pay to the Claimant, James M. Harris, attorney's fees in the amount of \$5000.00, (Five Thousand Dollars). Based on the pleading and evidence presented at the hearing the Arbitrator finds that he has the authority to grant attorneys' fees;
4. Claimant James M. Harris shall execute the release that is attached as exhibit "C" to the Answer to the Statement of Claim and Counterclaim, which was filed on June 18, 2001. (A copy of the General Release described above is attached hereto as exhibit "A" to this award);
5. Except as otherwise specified herein, each party shall bear its own costs; and
6. Any and all relief not specifically addressed herein, is 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	= \$ 175.00
Counterclaim filing fee	= \$ 500.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person at the time of the event(s) giving rise to the dispute. In this matter, the member firms HD Brous & Co., Inc. and Alex Brown Incorporated are parties to this matter

Respondent, HD Brous & Co., Inc.

Member surcharge	= \$800.00
Pre-hearing process fee	= \$600.00

Respondent, Alex Brown Inc.

Member surcharge	= \$800.00
Pre-hearing process fee	= \$600.00

Forum Fees and Assessments

The Arbitrator has the authority to assess forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, 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 single arbitrator x \$1,000.00	= \$1,000.00
Pre-hearing Conference: August 20, 2001	1 session
Total Forum Fees	= \$ 1,000.00

Respondent, Brous and Alex Brown are jointly and severally liable and shall pay the forum fees of \$1000.00

Fee Summary

1. Claimant, James M. Harris, is solely liable for:

Initial Filing Fee	= \$ 175.00
Less payments	= \$ 775.00
Balance refunded by NASD Dispute Resolution, Inc.	= \$ 600.00

2. Respondent, HD Brous & Co. Inc., is solely liable for:

Member Fees	= \$ 1,400.00
Less payments	= \$ 1,400.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 00

3. Respondent, Alex Brown Inc., is solely liable for:

Member Fees	= \$ 1,400.00
Less payments	= \$ 1,400.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 00

4. Respondent, HD Brous & Co. Inc., and Banc Alex Brown Inc. are jointly and severally liable for:

Forum Fees	= \$ 1,000.00
Filing Fees	= \$ 500.00
Total Fees	= \$ 1,500.00
Less payments	= \$ 00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,500.00

All balances are due to NASD Dispute Resolution, Inc.

Arbitrator's Signature

Bertrand C. Moser, Esq.
Public Arbitrator

Signature Date

Date of Service (For NASD-Dispute Resolution office use only)

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4. Respondent, HD Brous & Co. Inc., and Banc Alex Brown Inc. are jointly and severally liable for:

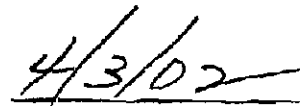
Forum Fees	= \$ 1,000.00
Filing Fees	= \$ 500.00
Total Fees	= \$ 1,500.00
Less payments	= \$ 00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,500.00

All balances are due to NASD Dispute Resolution, Inc.

Arbitrator's Signature



Bertrand C. Moser, Esq.
Public Arbitrator



Signature Date

Date of Service (For NASD-Dispute Resolution office use only)

NOV-15-00 WED 02:48 PM SHEPHERD & SMITH

FAX: 7132277215

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GENERAL RELEASE

To All to Whom These Presents Shall Come or May Concern, GREETINGS:

KNOW YE that JAMES M. HARRIS, JR., for and in consideration of the sum of Fifteen Thousand and no/100ths dollars (\$15,000.00), and other good and valuable consideration received from or on behalf of HD BROUS & CO., INC. ("HD Brous"), BT ALEX BROWN, INC. ("Alex Brown") and JOSEPH JACOBY ("Jacoby"), the receipt of which is hereby acknowledged, does hereby remise, release, acquit, satisfy, forever discharge and by these presents for his heirs, executors, administrators, principals, beneficiaries and assigns does hereby remise, release, acquit, satisfy, and forever discharge HD Brous and Alex Brown and their parent, subsidiaries, affiliates, predecessors, successors, and their current and former employees, officers, directors, agents, and assigns, and Jacoby, and his heirs, executors, administrators, principals, beneficiaries and assigns, of and from all and any manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, executions, judgments, claims and demands whatsoever, in law or in equity, which he ever had, now has, or which his heirs, executors, administrators, principals, beneficiaries or assigns hereafter can, shall, or may have from, upon or by reason of any matter, ~~cause or thing whatsoever, from the beginning of the world to the date of~~ *MADE THE BASIS OF THE ARBITRATION REFERENCED* *IN THE NEXT PARAGRAPH HEREOF.* *DTA*
these presents.

It is further understood and agreed that Harris, his heirs, executors, administrators, principals, beneficiaries and assigns, forever agree and covenant to cause him execute and file a stipulation for a dismissal with prejudice only as to the claims asserted against HD Brous, Alex Brown and Jacoby in the arbitration styled: James M. Harris Jr., Claimant v. Investors Associates, Inc., Worthington Capital Group, Inc., HD Brous & Company, BT Alex Brown, Inc., Brian

1-11/23/02-1

Exhibit "A"

Brennan and Joseph Jacoby, Before the National Association of Securities Dealers, Inc., Case No. 99-03208.

It is further understood and agreed that Harris authorizes HD Brous to draw the settlement check payable to the order of "James M. Harris and Shepherd & Smith, P.C." and to deliver said check to William Shepherd, Esq., his counsel in this matter, and further releases HD Brous, Alex Brown and Jacoby from any and all claims arising out of or relating to the payment of the settlement proceeds in this matter, and agrees that he will not seek anything further, including any other payment.

It is further understood and agreed that this settlement is the compromise of doubtful and disputed claims, and is not to be construed as an admission of liability on the part of HD Brous, Alex Brown and Jacoby, such liability being expressly denied.

Harris represents, warrants and agrees that he will keep confidential the terms and conditions of all settlement discussions and/or settlement agreements with HD Brous, Alex Brown and Jacoby, and the facts or circumstances of the underlying matter, and will discuss this settlement only with his attorneys and accountants on an as needed basis, and will instruct said accountants and attorneys not to disclose such matters to anyone in any manner, unless such disclosure is required pursuant to valid legal process, an unsolicited request from a securities industry regulatory authority or as otherwise required by law, or to enforce the terms of this General Release.

This General Release contains the entire agreement between the parties hereto, and cannot be changed, altered or modified except by a writing signed by all parties hereto. The terms of this General Release are contractual and not a mere recital.

If any of the provisions or terms of this General Release shall be held for any reason to be invalid or unenforceable, such invalidity or unenforceability shall not affect any of the other terms hereof, and this General Release shall be construed as if such unenforceable term had never been contained herein.

Harris confirms and states that he has carefully read the foregoing General Release, knows the contents thereof, and signs his name as his own free act.

WITNESS my hand and seal at the place and on the date indicated below.

CAUTION: READ BEFORE SIGNING

STATE OF

Texas

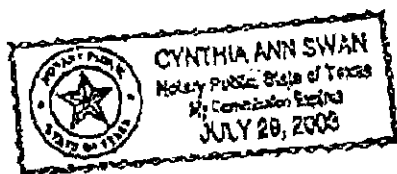
COUNTY OF

Jefferson ss.

James M. Harris, Jr.

I, an officer duly authorized to take acknowledgments, duly qualified by the State of Florida, hereby certify that James M. Harris, Jr., this day acknowledged before me that he executed the foregoing General Release. He is personally known to me or has produced drivers license # 08023961 as identification and did take an oath.

IN WITNESS WHEREOF, I hereunto set my hand and official seal in the city of Beaumont, Texas this 13 day of November, 2000.



Cynthia Ann Swan
NOTARY PUBLIC, State of TEXAS

Cynthia Ann Swan
Print Notary Name

My Commission Expires: