

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Ronald S. and Annetta Essary

and

01-03158
Kansas City, Missouri

Name of Respondents

Marion Bass Securities Corporation,
Marion Frederick Bass, Jr.,
Marion Bass Investments Group,
Gregory Lowe,
Mark Fitzgerald Bass,
Robert James Brietz, Sr.,
Gerald Paul Chandik,
Randolph McCraven Nash,
and Robert Harold Reber, Jr.
Josephthal & Co., Inc.
John Thomas Murphy, III

REPRESENTATION OF PARTIES

Ronald S. and Annetta Essary ("**Claimants**") were represented by Diane A. Nygaard, Esq. and Robert R. Barton, Esq., The Nygaard Law Firm, Kansas City, Missouri.

Marion Bass Securities Corporation ("**Respondent MB Securities**") was not present at the hearing and had no representative at the hearing

Marion Frederick Bass, Jr. ("**Respondent Bass, Jr.**") was initially represented by George A. Koenig, Esq. during the pre-hearing telephonic conferences. However, in a letter dated September 25, 2002 addressed to Mr. Edward T. Anderson, NASD Dispute Resolution, Inc., Mr. Koenig indicated that Mr. Bass might be filing for bankruptcy and that neither he nor Bass planned on participating in the arbitration hearing scheduled. Neither appeared at the hearing.

Gregory Lowe ("**Respondent Lowe**") was initially represented by Mr. Delmer C. Gowing, III, Esq. Mr. Gowing attended the initial pre-hearing conference. However, Mr. Gowing in a filing dated October 8, 2002 withdrew as counsel for Mr. Lowe, because Lowe informed Mr. Gowing that Lowe was filing for personal bankruptcy, which personal bankruptcy was received by the Panel during the hearing process. Although Lowe appeared as a witness for certain Respondents during the hearing,

because of the filing of the notice of a Chapter 7 bankruptcy case in the Northern District of Georgia, no award or other matter concerning Lowe was considered by the Panel except for his testimony which was given on behalf of certain Respondents.

Marion Bass Investments Group ("**Respondent MB Investments**"), Mark Fitzgerald Bass ("**Respondent Bass**"), Robert James Brietz, Sr. ("**Respondent Brietz**"), Randolph McCraven Nash ("**Respondent Nash**"), and Robert Harold Reber, Jr. ("**Respondent Reber**"), were represented by Mr. Robert H. McKnight, Esq., Freed & Berman, P.C., Atlanta, Georgia but no designated representative of MB Investments appeared at the hearing.

Gerald Paul Chandik ("**Respondent Chandik**") was not present at the hearing and had no representative at the hearing

CASE INFORMATION

The Statement of Claim was filed on or about June 14, 2001. Amended Statement of Claim was filed on or about December 19, 2001. Submission Agreement of Claimant Ronald S. Essary was signed on May 31, 2001. Submission Agreement of Annetta Essary was signed on June 8, 2001.

Answer and Defenses of Respondents Marion Bass Securities Corporation, Marion Frederick Bass, Jr. and Marion Bass Investments Group was filed on or about September 4, 2001. Marion F. Bass signed submission Agreement of Respondent Marion Bass Securities Corporation on October 1, 2001. Submission Agreement of Respondent Marion Frederick Bass, Jr. was signed on October 1, 2001. Submission Agreement of Respondent Marion Bass Investments Group was signed on October 1, 2001.

Answer of Respondent Gregory S. Lowe to Claimants' Statement of Claim was filed on or about October 1, 2001. Submission Agreement of Respondent Gregory Lowe was signed on September 28, 2001.

Answer on Behalf of Respondents Mark Fitzgerald Bass, Randolph McCraven Nash, and Robert Harold Reber, Jr. was filed on or about March 4, 2002. Motion of Respondents Mark Fitzgerald Bass, Robert James Brietz, Sr., Randolph McCraven Nash, and Robert Harold Reber, Jr. to Dismiss Claimants' Claims Against them was filed on or about September 30, 2002.

Answer on Behalf of Respondent Robert James Brietz, Sr. was filed on or about April 15, 2002.

CASE SUMMARY

Claimants submitted the following summary:

Claimants alleged that all Respondents named in the Amended Statement of Claim breached their duties based upon the following: (a) the failure to liquidate Claimants' account on two separate occasions when an agreement had been made by Claimants and Respondents to do so; and (b) the hiring, retention and supervision of Respondents' broker assigned to the account, Gregory Lowe, including but not limited to their failure to take action to protect Claimants as a result of the numerous "red flags" in Mr. Lowe's background and in his handling of the account. Claimants alleged that the individual Respondents were liable as "control persons" based upon their actions, duties and responsibilities; their acknowledged status as "control persons" in the firm BD; and their admissions and testimony at the hearing. Claimants sought relief based upon the following theories: negligence, breach of fiduciary duty, breach of contract, fraud, and violation of the Kansas Securities Act.

Respondents denied the allegations set forth in the Statement of Claim.

In the Answer and Defenses of Respondents Marion Bass Securities Corporation, Marion Frederick Bass, Jr. and Marion Bass Investments Group it was stated, in part, that:

Claimants are highly sophisticated and wealthy investors with a long history of trading speculative securities on margin. Claimants admit that that [sic] their account representative, Respondent Greg Lowe ("Lowe"), had been their broker for several years before they opened an account at MBSC. Statement of Claim, p. 2. Previously, Claimants had at least one account with Lowe at Josephthal & Co., Inc. from 1998 to 2000. While at Josephthal, Claimants continuously traded speculative securities on margin.

RELIEF REQUESTED

Claimants requested that a joint and several award be entered against all Respondents not in bankruptcy and present at the hearing (i.e., Mark Bass, Robert Brietz, Randolph Nash, Robert Reber, Jr., and Marion Bass Investments Group) as follows: (a) for Claimants' actual damages of \$510,000; (b) for statutory interest of 15 % under the Kansas Securities Act; (c) for their attorney's fees of \$51,205; (d) for their costs; and (e) for any other relief the Panel deemed appropriate.

In the Amended Statement of Claim, the Claimants requested an award against the Respondents in the amount of \$769,959.87 as well as repayment of commissions and costs charged because the account was churned. Under Kansas law, Claimants sought an award of 15% of the amount of any award as well as costs, attorneys' fees and filing fees. Claimants sought punitive damages and a disciplinary referral of each of the Respondents to the NASDR's Compliance and Regulation Division.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Notice of Dismissal Without Prejudice of Claims Against Josephthal Securities was filed on or about August 9, 2001.

Notice of Dismissal of Claims Against John Thomas Murphy, III was filed on or about July 31, 2001.

Upon review of the file and the representations made by/on behalf of the Claimants, the undersigned arbitrators have determined that Respondents Marion Bass Securities Corporation, and Marion Bass Investments Group had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondents Mark Fitzgerald Bass, Robert James Brietz, Sr., Gerald Paul Chandik, Randolph McCraven Nash, and Robert Harold Reber, Jr. did not file with the NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

By letter dated October 11, 2002, the parties were advised of the Arbitration Panel's decision to deny the Motion to Dismiss filed on behalf of Respondents Mark Fitzgerald Bass, Robert James Brietz, Sr., Randolph McCraven Nash and Robert Harold Reber, Jr.

Respondent Lowe filed a Chapter 7 bankruptcy case in the Northern District of Georgia. The Panel considered the filing of the bankruptcy notice on October 22 and did not proceed against Respondent Lowe. However, Lowe appeared as a witness for certain Respondents.

Respondent Bass, Jr. filed a Chapter 7 bankruptcy case in the Western District of North Carolina. The Panel considered the filing of the bankruptcy notice and did not proceed against Respondent Bass, Jr.

During the hearing, the Chairperson of the Panel disclosed, upon hearing testimony of a witness, Mr. Moneymaker, called by the Claimants, that his law firm had provided intellectual property services to a corporation known as Creative Marketing International Corp. which, at one time, was owned in part by the Claimant Ronald S. Essary. Creative Marketing International Corp was not listed on the Witness and Exhibit lists filed by Claimants. It was also determined as part of a check of the conflicts made contemporaneously with review of the information divulged by Mr. Moneymaker that the Chairperson's law firm was doing intellectual property work for an entity called Tear Drop Expressions which was disclosed by the Claimant Annetta Essary as her proprietorship. After an extensive discussion concerning the disclosures made by the Chairperson of the Arbitration Panel, both the Respondents and the Claimants acknowledged the disclosure, waived any conflict and

authorized the proceeding to continue. Also in the proceeding, Panel member Burditt disclosed knowledge of an acquaintance at one of the entities that were described as the current owner of Creative Marketing. The parties waived any conflict. As a result of the disclosures and the waivers, the composition of the Panel was approved again by the parties.

After the hearing but before Closing of the record, the Panel received additional information concerning computation of damages from both the Claimants and Respondents as well as written information and affidavits pertaining to the potential award of attorneys' fees in the case.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Marion Bass Securities Corporation, Gerald Paul Chandik, Marion Bass Investments Group and Robert James Brietz, Sr. shall be and hereby are jointly and severally liable for and shall pay to Claimants Ronald S. and Annetta Essary the sum of \$93,000.00 (Ninety Three Thousand Dollars and No Cents) together with interest at the rate of fifteen percent (15%) per annum from the date of this Award.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Randolph McCraven Nash's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Randolph McCraven Nash must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Claimants Ronald S. and Annetta Essary shall be and hereby are jointly and severally liable for and shall pay to Respondent Randolph McCraven Nash attorneys' fees in the amount of \$7,500.00 (Seven Thousand Five Hundred Dollars and No Cents).
4. The Claims asserted against Respondents Mark Fitzgerald Bass and Robert Harold Reber, Jr. shall be and hereby are dismissed in their entirety.
5. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

6. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$375.00

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(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firms originally named are Josephthal & Co., Inc. and Marion Bass Securities Corporation.

Member surcharge = \$2,000.00
Pre-hearing process fee = \$ 600.00
Hearing process fee = \$3,500.00

Forum Fees and Assessments

The Arbitration Panel assesses 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:

One (1) Pre-hearing session(s) with a single arbitrator x \$450.00 = \$450.00
Pre-hearing conference(s): May 22, 2002 1 session

Two (2) Pre-hearing session(s) with Panel x \$1,200.00 = \$2,400.00
Pre-hearing conference(s): April 4, 2002 1 session
April 25, 2002 1 session

Six (6) Hearing sessions x \$1,200.00 = \$7,200.00
Hearing Date(s): October 22, 2002 3 sessions
October 23, 2002 3 sessions

Total Forum Fees = \$10,050.00

The Arbitration Panel has assessed \$225.00 of the forum fees to Ronald S. and Annetta Essary.
The Arbitration Panel has assessed \$9,825.00 of the forum fees jointly and severally to Marion Bass Securities Corporation, Marion Bass Investments Group, Gerald Paul Chandik and Robert James Brietz, Sr.

Fee Summary

Claimants, Ronald S. and Annetta Essary, shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$ 225.00
Total Fees	= \$ 600.00
<u>Less payments</u>	= \$1,575.00
Balance to be refunded by NASD Dispute Resolution	= \$ 975.00

Respondent, Marion Bass Securities Corporation, shall be and hereby is liable for:

Member Fees	= \$6,100.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$6,100.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$6,100.00

Respondent, Josephthal & Co., Inc., shall be and hereby is liable for:

Member Fees	= \$2,000.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$2,000.00
<u>Less payments</u>	= \$6,100.00
Balance to be refunded by NASD Dispute Resolution	= \$4,100.00

Respondents, Marion Bass Securities Corporation, Marion Bass Investments Group, Gerald Paul Chandik and Robert James Brietz, Sr., shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$9,825.00
Balance Due NASD Dispute Resolution	= \$9,825.00

All balances are due to NASD Dispute Resolution

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Robert E. Fitzgerald, Jr., Esq. - Public Arbitrator, Presiding Chair
Arthur F. Dewsberry - Public Arbitrator
Bruce Burditt, CPA - Non-Public Arbitrator

Concurring Arbitrators:



Robert E. Fitzgerald, Jr., Esq.
Public Arbitrator, Presiding Chair

11/27/02

Signature Date

Arthur F. Dewsberry
Public Arbitrator

Signature Date

Bruce Burditt, CPA
Non-Public Arbitrator

Signature Date

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Arbitration No. 01-03158
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- \$4,100.00

Respondents, Marion Bass Securities Corporation, Marion Bass Investments Group, Gerald Paul Chandik and Robert James Brietz, Sr., shall be and hereby are jointly and severally liable for:

Forum Fees

= \$9,825.00

Balance Due NASD Dispute Resolution

= \$9,825.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

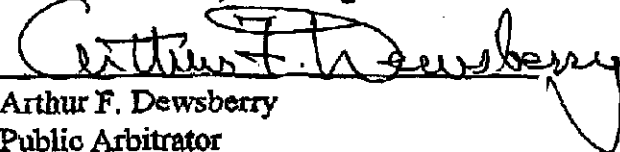
Robert E. Fitzgerald, Jr., Esq. - Public Arbitrator, Presiding Chair

Arthur F. Dewsberry - Public Arbitrator


Bruce Burditt, CPA - Non-Public Arbitrator

Concurring Arbitrators:

Robert E. Fitzgerald, Jr., Esq.
Public Arbitrator, Presiding Chair


Arthur F. Dewsberry
Public Arbitrator

Signature Date


Signature Date

Bruce Burditt, CPA
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.
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ARBITRATION PANEL

Robert E. Fitzgerald, Jr., Esq. - Public Arbitrator, Presiding Chair
Arthur F. Dewsberry - Public Arbitrator
Bruce Burditt, CPA - Non-Public Arbitrator

Concurring Arbitrators:

Robert E. Fitzgerald, Jr., Esq.
Public Arbitrator, Presiding Chair

Signature Date

Arthur F. Dewsberry
Public Arbitrator

Signature Date


Bruce Burditt, CPA
Non-Public Arbitrator

11/27/2002
Signature Date