

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Names of Claimants

Douglas and Lisa Brocail

and

Case Number: 02-05361  
Hearing Site: Houston, Texas

Names of Respondents

AXA Advisors, LLC, and  
Scott E. Brocail

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**NATURE OF DISPUTE**

Customers v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Douglas and Lisa Brocail ("**Claimants**") were represented by Nelson Ebaugh, Esq., Zimmerman, Axelrad, Meyer, Stern & Wise, Houston, Texas.

AXA Advisors, LLC ("**AXA Advisors**") was represented by Marjorie E. Berman, Esq., Krantz & Berman, LLP, New York, New York.

Scott E. Brocail ("**Scott Brocail**") of Fayetteville, Arkansas, did not enter an appearance in this matter.

**CASE INFORMATION**

The Statement of Claim was filed on or about September 10, 2002. The Submission Agreement of Claimants, Douglas and Lisa Brocail, was signed on or about September 5, 2002.

Statement of Answer was filed by Respondent, AXA Advisors, LLC, on or about February 21, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract, negligence, failure to supervise, breach of fiduciary duty and misrepresentations. The causes of action

related to the alleged unauthorized purchase of Sabre Holdings, PUMA Technology, Inc., XO Communications, Inc., Van Kampen Senior Floating Rate Fund, Class A shares of Alliance International Premier Growth Fund, Alliance Worldwide Privatization Fund, Alliance Health Card Fund, Alliance Technology Fund, and Alliance Premier Growth Fund.

Claimants alleged that Scott Brocail forged the names of the Claimants to two powers of attorney which purported to give Scott Brocail full discretionary power to buy, sell, and trade securities in their account. Claimants also alleged that Scott Brocail arranged with AXA to send statements of the Claimants' account to his own residence rather than to Claimants' residence. Claimants alleged that this was done without their knowledge or authorization. In addition, Claimants alleged that Scott Brocail forged the names of Claimants to fourteen unauthorized wire transfer instructions without Claimants' permission, knowledge, or consent.

Unless specifically admitted in its Answer, Respondent, AXA Advisors, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants are barred from pursuing their claims against AXA Advisors because Claimants authorized and ratified each and every transaction complained of upon which recovery is sought; Claimants assumed the risk of any and all losses that may have occurred; and Claimants failed to mitigate their damages.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$1,120,046.50
Punitive/Exemplary Damages	\$1,000,000.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified
Rescission	Unspecified

Respondent, AXA Advisors, requested that the claims asserted against it be denied in its entirety and that it be awarded its costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent, Scott E. Brocail, has been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent, Scott E. Brocail, 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.

Respondent, AXA Advisors, LLC, did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is 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.

Respondent, Scott Brocail, did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") is bound by the determination of the arbitration panel on all issues submitted.

On or about March 15, 2004, Claimants settled their claims with Respondent AXA Advisors.

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 NASD Dispute Resolution ("NASD").

### **AWARD**

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

- 1.) Respondent, Scott E. Brocail, is liable for and shall pay to Claimants, Douglas and Lisa Brocail, the sum of \$321,963.00 in compensatory damages;
- 2.) Respondent, Scott E. Brocail, is liable for and shall pay to Claimants, Douglas and Lisa Brocail, the sum of \$91,000.00 in attorneys' fees pursuant to Texas statute;
- 3.) Respondent, Scott E. Brocail, is liable for and shall pay to Claimants, Douglas and Lisa Brocail, the sum of \$500.00 in costs;
- 4.) Any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

## **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 = \$ 500.00

### **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 AXA Advisors, LLC.

Member surcharge = \$ 2,800.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 5,000.00

### **Adjournment Fees**

Adjournments granted during these proceedings:

September 2-5, 2003, adjournment requested by AXA Advisors = \$ 1,200.00  
April 26-28, 2004, adjournment requested by Claimants = \$ 1,200.00

### **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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$1,200.00 = \$2,400.00  
Pre-hearing conferences: March 7, 2003 1 session  
December 3, 2003 1 session  
  
One (1) Hearing session x \$1,200.00 = \$1,200.00  
Hearing Date: November 4, 2004 1 session  

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Total Forum Fees = \$3,600.00

The Arbitration Panel has assessed \$3,600.00 of the forum fees to Scott E. Brocail.

**FEE SUMMARY**

Claimants, Douglas and Lisa Brocail, are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
<u>Adjournment Fee</u>	<u>= \$ 1,200.00</u>
Total Fees	= \$ 1,700.00
<u>Less payments</u>	<u>= \$ 1,700.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, AXA Advisors, LLC, is liable for:

Member Fees	= \$ 8,550.00
<u>Adjournment Fee</u>	<u>= \$ 1,200.00</u>
Total Fees	= \$ 9,750.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,200.00

Respondent, Scott E. Brocail, is liable for:

<u>Forum Fees</u>	<u>= \$ 3,600.00</u>
Total Fees	= \$ 3,600.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,600.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Jerry Hoover, Esq. - Public Presiding Chair  
Leonard S. Alpert - Public Arbitrator  
Thomas H. Griffin - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Jerry Hoover, Esq.  
Jerry Hoover, Esq.  
Public Arbitrator, Presiding Chair

November 9, 2004  
Signature Date

/s/ Leonard S. Alpert  
Leonard S. Alpert  
Public Arbitrator

November 9, 2004  
Signature Date

/s/ Thomas H. Griffin  
Thomas H. Griffin  
Non-Public Arbitrator

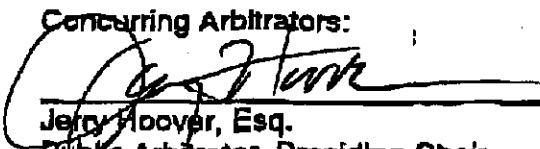
November 9, 2004  
Signature Date

November 9, 2004  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

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Leonard S. Alpert - Public Arbitrator  
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Concurring Arbitrators:

  
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Jerry Hoover, Esq.  
Public Arbitrator, Presiding Chair

11-9-04  
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Signature Date

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