

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Marvin Brockman and Evelyn Brockman (Claimants) v. JB Hanauer & Co. and Allen H. Wilson (Respondents)

Case Number: 03-00146

Hearing Site: New York, New York

Nature of the Dispute: Customers vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Claimants Marvin Brockman and Evelyn Brockman JT Ten ("Brockmans"), Marvin Brockman IRA ("M. Brockman IRA"), Evelyn Brockman IRA ("E. Brockman IRA"), Marvin Brockman Roth IRA ("M. Brockman Roth IRA"), and Evelyn Brockman ("E. Brockman") hereinafter collectively referred to as "Claimants": Howard S. Meyers, Esq., Meyers & Heim, LLP, New York, NY.

Respondents JB Hanauer & Co. ("JB Hanauer") and Allen H. Wilson ("Wilson") hereinafter collectively referred to as "Respondents": Richard C. Szuch, Esq., Dillon, Bitar & Luther, L.L.C., Morristown, NJ. Previously represented by: Richard C. Szuch, Esq., Lowenstein Sandler, PC, Roseland, NJ.

CASE INFORMATION

Statement of Claim filed on or about: January 7, 2003.

Opposition to Respondents' Motion to Dismiss filed by Claimants on or about: March 26, 2003.

M. Brockman signed the Uniform Submission Agreement: December 19, 2002.

E. Brockman signed the Uniform Submission Agreement: December 19, 2002.

Joint Statement of Answer and Motion to Dismiss filed by Respondents on or about: March 7, 2003.

JB Hanauer signed the Uniform Submission Agreement: January 16, 2003.

Wilson signed the Uniform Submission Agreement: February 24, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract; breach of fiduciary duty; negligence; common law fraud; breach of good faith and fair dealing; negligent misrepresentation; breach of NASD Rules of Conduct; securities brokerage malpractice; violation of NJ Consumer Protection Laws; negligent supervision; violations of the rules

of the Securities Exchange Act of 1934; control person liability; and respondeat superior. Claimants' claim involved mutual funds; bonds; and other unspecified securities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$300,000.00; prejudgment and postjudgment interest; disgorgement of commissions; costs, including expert witness fees, filing fees, document production, and hearing costs; reasonable rate of return had the accounts and retirement funds been properly managed; punitive damages of \$1,000,000.00; reasonable attorneys' fees; and referral of this matter for investigation and prosecution; and any other and further relief that is just, equitable, and proper. In their Opposition to the Motion to Dismiss, Claimants requested that the Respondents' Motion to Dismiss be denied in its entirety.

Respondents requested that all claims against them be dismissed pre-hearing; that the Panel enter an Order expunging all records related to this claim from the NASD CRD system; that costs and reasonable attorneys' fees be assessed against Claimants; and such other and further relief as the Panel deems appropriate and just.

OTHER ISSUES CONSIDERED AND DECIDED

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, and the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are hereby dismissed in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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. Accordingly, JB Hanauer & Co. is a party.

Member surcharge = \$2,800.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$5,000.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 a single arbitrator @ \$450.00 = \$ 900.00

Pre-hearing conferences: August 29, 2003 1 session
November 17, 2003 1 session

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$ 1,200.00

Pre-hearing conference: July 14, 2003 1 session

Eight (8) Hearing sessions @ \$1,200.00 = \$ 9,600.00

Hearing Dates: January 12, 2004 2 sessions
January 13, 2004 2 sessions
January 14, 2004 2 sessions
January 15, 2004 2 sessions

Total Forum Fees = \$11,700.00

1. The Panel has assessed \$5,850.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$5,850.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 500.00

Forum Fees = \$5,850.00

Total Fees = \$6,350.00

Less payments = \$1,700.00

Balance Due NASD Dispute Resolution = \$4,650.00

2. JB Hanauer is solely liable for:

| | |
|-------------------------------------|--------------|
| <u>Member Fees</u> | = \$8,550.00 |
| <u>Total Fees</u> | = \$8,550.00 |
| <u>Less payments</u> | = \$8,550.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

3. Respondents are jointly and severally liable for:

| | |
|-------------------------------------|--------------|
| <u>Forum Fees</u> | = \$5,850.00 |
| <u>Total Fees</u> | = \$5,850.00 |
| <u>Less payments</u> | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$5,850.00 |

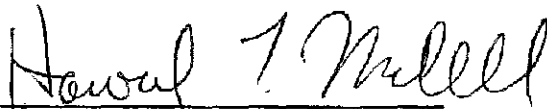
| |
|---|
| All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code. |
|---|

ARBITRATION PANEL

| | | |
|-------------------------|---|------------------------------------|
| Howard L. Mandell, Esq. | - | Public Arbitrator, Presiding Chair |
| Abigail J. Pessen, Esq. | - | Public Arbitrator |
| Judith P. Brooks | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.



Howard L. Mandell, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Abigail J. Pessen, Esq.
Public Arbitrator

Signature Date

Judith P. Brooks
Non-Public Arbitrator

Signature Date

February 4, 2004

Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution
Arbitration No. 03-00146
Award Page 5 of 5

ARBITRATION PANEL


| | | |
|-------------------------|---|------------------------------------|
| Howard L. Mandell, Esq. | - | Public Arbitrator, Presiding Chair |
| Abigail J. Pessen, Esq. | - | Public Arbitrator |
| Judith P. Brooks | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Howard L. Mandell, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Abigail J. Pessen, Esq.
Public Arbitrator

Signature Date

Judith P. Brooks
Non-Public Arbitrator

Signature Date

February 4, 2004
Date of Service (For NASD Dispute Resolution use only)