

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:
Deutsche Bank Securities, Inc., formerly known as Deutsche Banc Alex.Brown Inc.,
Claimant v. John Bantleman, Respondent

Case Number: 03-00375

Hearing Site: San Francisco, California

Nature of the Dispute: Member v. Customer

REPRESENTATION OF PARTIES

For Claimant:

David D. Piper, Esq.
Keesal, Young & Logan
Long Beach, California

For Respondent:

John Bantleman
London, United Kingdom

CASE INFORMATION

Statement of Claim filed: January 14, 2003

Claimant Deutsche Bank Securities, Inc., formerly known as Deutsche Banc Alex. Brown Inc.'s ("Alex.Brown") Uniform Submission Agreement signed: January 13, 2003

CASE SUMMARY

Claimant alleged that the above-referenced dispute arises out of Respondent's continuing refusal to pay the sum of \$940,365.37 owed to Alex.Brown incurred as a result of his borrowing against restricted securities in his account at Alex.Brown. Claimant further alleged that despite entering into written agreements giving Alex.Brown a security interest in those restricted shares and promising to pay any unsecured debit balances, Respondent has failed to pay the balance due Alex.Brown. Claimant also alleged the following claims: 1) Breach of Written Contract; 2) Breach of Oral Contract; 3) Account Stated; 4) Open Book Account; 5) Money Had and Received; 6) Money Lent; 7) Money Paid; 8) Unjust Enrichment; and 9) Declaratory Relief. Claimant's dispute involved investments in Evolve Software Inc. common stock.

RELIEF REQUESTED

Claimant requested:

1. Damages in the amount of \$940,365.37;
2. Interest as provided by law;
3. Attorneys' fees and costs as provided by the terms of the Account Agreement; and
4. Such other and further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with NASD Dispute Resolution ("NASD-DR") a Statement of Answer or properly executed submission to arbitration. The Panel determined that Respondent is subject to NASD-DR jurisdiction pursuant to the Deutsche Banc Alex.Brown Account Agreement for Account No. 247-07122 ("Account Agreement") executed by Respondent on or about February 29, 2000. The Panel further determined that Respondent is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and is bound by the determination of the Panel on all issues submitted.

Respondent did not appear at the evidentiary hearing in this matter. Pursuant to Rule 10318 of the Code, the Panel determined that Respondent received proper notice of the hearing and ruled to proceed in Respondent's absence.

At the outset of the hearing, the Claimant confirmed approval of the Panel after additional disclosure was made by arbitrator Jeffrey M. Allen, Esq. that subsequent to the commencement of this case, he acted as arbitrator in a matter in which the Claimant's attorney's law firm represented a party.

Claimant 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, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant the sum of \$1,152,932.56, inclusive of interest.
2. Respondent is liable for and shall pay to Claimant the sum of \$35,038.00 in attorney's fees pursuant to the terms of the Account Agreement.

3. Respondent is liable for and shall pay to Claimant the sum of \$3,116.16 in costs.
4. All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

| | |
|--------------------------|--------------|
| Initial claim filing fee | = \$1,250.00 |
|--------------------------|--------------|

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 that gave rise to the dispute, claim, or controversy. Accordingly, Alex.Brown is a party and the following fees are assessed:

| | |
|----------------------------|----------------------|
| Member Surcharge | = \$ 2,250.00 |
| Pre-Hearing Process Fee | = \$ 750.00 |
| <u>Hearing Process Fee</u> | <u>= \$ 4,000.00</u> |
| Total Member Fees | = \$ 7,000.00 |

Forum Fees and Assessments

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A 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:

| | | |
|--|-------------------|---------------------|
| (3) Pre-hearing conference sessions with the Panel | | |
| @ \$1,200.00/session | | = \$3,600.00 |
| Pre-hearing conferences: | November 18, 2005 | 1 session |
| | March 24, 2006 | 1 session |
| | May 17, 2006 | 1 session |
| (1) Hearing session @ \$1,200.00/session | | = \$1,200.00 |
| Hearing Date: | October 12, 2006 | 1 session |
| Total Forum Fees | | = \$4,800.00 |

The Panel assessed the \$4,800.00 in forum fees to Respondent John Bantleman.

Fee Summary

1. Claimant Alex.Brown is charged with the following fees and costs:

| | |
|---------------------|-----------------|
| Initial Filing Fee | = \$ 1,250.00 |
| Member Fees | = \$ 7,000.00 |
| Total Fees | = \$ 8,250.00 |
| Less Payments | = \$(9,450.00) |
| Refund Due Claimant | = \$(1,200.00) |

2. Respondent John Bantleman is charged with the following fees and costs:

| | |
|---------------------|---------------|
| Forum Fees | = \$ 4,800.00 |
| Less Payments | = \$(0.00) |
| Balance Due NASD-DR | = \$ 4,800.00 |

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

ARBITRATION PANEL

| | | |
|------------------------|---|------------------------------------|
| Jeffrey M. Allen, Esq. | - | Public Arbitrator, Presiding Chair |
| Kenneth W. Gosliner | - | Public Arbitrator |
| Carlos Richard Mangum | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures


Jeffrey M. Allen, Esq.
Chair, Public Arbitrator

10/24/06
Signature Date

Kenneth W. Gosliner
Public Arbitrator

Signature Date

Carlos Richard Mangum
Non-Public Arbitrator

Signature Date

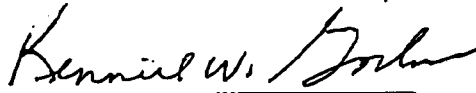
10/30/06
Date of Service

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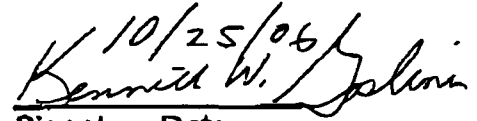
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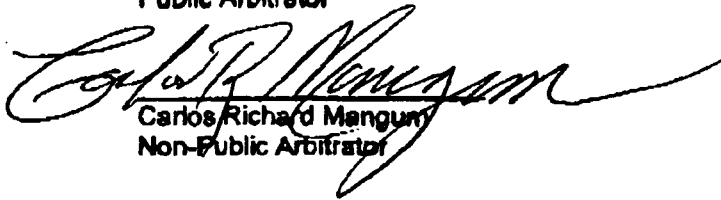
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