

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Alan Lewis, James Ascher, Irma Ascher, Irma Ascher IRA, and Barbalan Corporation  
(Claimants) v. Investec Asset Management U.S. Limited, York Securities, U.S. Clearing  
Corporation, and Brown & Company Securities Corp., n/k/a JP Morgan Invest, LLC.,  
(Respondents)

Case Number: 03-03697

Hearing Site: New York, New York

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Nature of the Dispute: Customers vs. Non-Member and Members.

**REPRESENTATION OF PARTIES**

Claimant Alan Lewis ("A. Lewis") appeared *pro se*.

Claimant James Ascher ("J. Ascher") appeared *pro se*.

Claimants Irma Ascher ("I. Ascher") and Irma Ascher IRA ("I. Ascher IRA") appeared  
*pro se*.

Claimant Barbalan Corp. ("Barbalan") appeared *pro se*.

A. Lewis, J. Ascher, I. Ascher, I. Ascher IRA, and Barbalan are hereinafter collectively  
referred to as "Claimants".

Respondent York Securities ("York"): Philip H. Kalban, Esq., Fischbein, Badillo,  
Wagner, Harding, New York, NY.

Respondent U.S. Clearing Corporation ("U.S. Clearing"): Peter Byer, Esq., Quick &  
Reilly, New York, NY.

Respondent Brown & Company Securities Corp., n/k/a JP Morgan Invest, LLC.,  
("Brown"): Bruce D. Levin, Esq., Bernkopf, Goodman & Baseman, LLP, Boston, MA.

Respondent Investec Asset Management U.S. Limited ("Investec") did not enter an  
appearance in this matter.

York, U.S. Clearing, Brown, and Investec are hereinafter collectively referred to as  
"Respondents".

### **CASE INFORMATION**

Statement of Claim filed on or about: May 19, 2003.

A. Lewis signed the Uniform Submission Agreement: April 16, 2003.

J. Ascher signed the Uniform Submission Agreement: April 18, 2003.

I. Ascher signed the Uniform Submission Agreement: May 7, 2003.

Barbalan signed the Uniform Submission Agreement: February 15, 2003.

Statement of Answer and Cross-Claim filed by York on or about: June 20, 2003.

York signed the Uniform Submission Agreement: June 20, 2003.

Statement of Answer filed by U. S. Clearing on or about: July 2, 2003.

Memorandum in Support of Answer filed by U. S. Clearing on or about:  
December 3, 2003.

U. S. Clearing signed the Uniform Submission Agreement: June 30, 2003.

Statement of Answer and Motion to Dismiss filed by Brown on or about: June 20, 2003.

Response to Cross-Claim of York filed by Brown on or about: September 10, 2003.

Brown signed the Uniform Submission Agreement on: June 12, 2003.

Investec did not file a Statement of Answer or sign the Uniform Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract; breach of fiduciary duty; errors and charges; failure to impose redemption fees in a timely manner; and misrepresentation. Claimants' claim involved mutual funds.

Unless specifically admitted in its Answer, York denied the allegations made in the Statement of Claim. In its Cross-Claim, York asserted the following cause of action: indemnification.

Unless specifically admitted in its Answer, U. S. Clearing denied the allegations made in the Statement of Claim.

Unless specifically admitted in its Answer and Motion to Dismiss, Brown denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in its Response to the Cross-Claim of York, Brown denied the allegations made in the Cross-Claim.

### **RELIEF REQUESTED**

Claimants requested reimbursement as follows: A. Lewis requested \$10,421.64, plus \$2,500.00 in punitive damages; J. Ascher requested \$7,688.00, plus \$2,500.00 in punitive

damages; I. Ascher requested \$10,029.75, plus \$2,500.00 in punitive damages; and Barbalan requested \$8,648.00, plus \$2,500.00 in punitive for total damages in the amount of \$46,787.39. Claimants also requested interest and all fees and costs relating to this arbitration and settlement of this matter.

In their Statement of Answer and Cross-Claim, York requested that the arbitration panel deny the relief requested as against York, or alternatively, to the extent that any relief is granted, finds that U. S. Clearing, Investec, and Brown are jointly and severally liable to York for the full amount of any relief granted against York, and grant York such further relief as is just.

In their Statement of Answer, U. S. Clearing requested that the Claim be dismissed.

In their Statement of Answer and Motion to Dismiss, Brown requested that the claims against them be dismissed and that Brown be awarded its costs, expenses and attorneys' fees, including forum fees.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Investec Asset Management U. S. Limited is not an NASD member and, therefore was not required to arbitrate in this forum and did not submit to NASD Dispute Resolution's jurisdiction.

A telephonic pre-hearing conference was held on October 7, 2003 at which the parties agreed to have this matter decided without a hearing.

Respondent Brown made a motion to dismiss as a matter of law. After due consideration, the Arbitrator denied said motion.

#### **AWARD**

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

1. Respondent York is liable for and shall pay to Claimant I. Ascher compensatory damages in the amount of \$2,484.90.
2. Respondent York is liable for and shall pay to Claimant J. Ascher compensatory damages in the amount of \$7,688.00.
3. Respondent York is liable for and shall pay to Claimant A. Lewis compensatory damages in the amount of \$10,421.64.

4. Respondent York is liable for and shall pay to Claimant Barbalan compensatory damages in the amount of \$8,648.00.
5. I. Ascher's claims against Respondent Brown are dismissed in their entirety.
6. Claimants' claims against Respondent U. S. Clearing are dismissed in their entirety.
7. York's Cross-Claim against Brown is dismissed in its entirety.
8. York's Cross-Claim against U. S. Clearing is dismissed without prejudice.
9. 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	= \$ 175.00
York's Cross-Claim filing fee	= \$1,000.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, York Securities is a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, U. S. Clearing Corp. is a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Brown & Company Securities Corp. is a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00

**Forum Fees and Assessments**

The Arbitrator has assessed forum fees for each session conducted. A 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 the sole Arbitrator @ \$450.00	= \$450.00
<u>Pre-hearing conference:      October 7, 2003      1 session</u>	
Total Forum Fees	= \$450.00

1. The Arbitrator has assessed \$225.00 of the forum fees jointly and severally against Claimants A. Lewis, J. Ascher and I. Ascher.
2. The Arbitrator has assessed \$225.00 of the forum fees jointly and severally against Respondents York, U. S. Clearing and Brown.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees (except Irma Ascher, IRA)</u>	= \$ 225.00
Total Fees	= \$ 400.00
<u>Less payments</u>	= \$ 625.00
Refund Due to Claimants	= \$ 225.00
2. York is solely liable for:

Cross-Claim Filing Fee	= \$1,000.00
<u>Member Fees</u>	= \$1,625.00
Total Fees	= \$2,625.00
<u>Less payments</u>	= \$1,625.00
Balance Due NASD Dispute Resolution	= \$1,000.00
3. U. S. Clearing is solely liable for:

<u>Member Fees</u>	= \$1,625.00
Total Fees	= \$1,625.00
<u>Less payments</u>	= \$ 425.00
Balance Due NASD Dispute Resolution	= \$1,200.00
4. Brown is solely liable for:

<u>Member Fees</u>	= \$1,625.00
Total Fees	= \$1,625.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,625.00

5. Respondents York, U. S. Clearing, and Brown are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 225.00

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

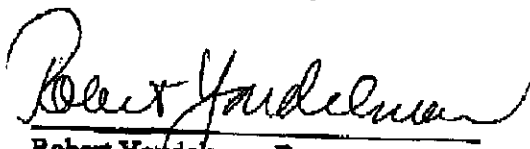
**ARBITRATOR**

Robert Youdelman, Esq.

Sole Public Arbitrator

**Arbitrator's Signature**

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.



Robert Youdelman, Esq.  
Sole Public Arbitrator

March 8, 2004  
Signature Date

March 11, 2004

Date of Service (For NASD Dispute Resolution use only)