

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

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In the Matter of the Arbitration Between

Names of Claimants / Counter Respondents

Jerjis J. Denno, MD, Shatha Denno  
and Fayka Dallo

and

Case Number: 03-06075  
Hearing Site: Houston, Texas

Names of Respondents / Counter Claimants /  
Third Party Claimants / Third Party Counter Respondents

Sands Brothers & Co, Ltd.,  
Steven Brett Sands  
and Martin Scott Sands

and

Name of Third Party Respondent / Third Party Counter Claimant

James A. Brodie

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**NATURE OF DISPUTE**

Customers v. Member Firm and Associated Persons  
Member Firm and Associated Persons v. Customers  
Member Firm and Associated Persons v. Associated Person  
Associated Person v. Member Firm and Associated Persons

**REPRESENTATION OF PARTIES**

Jerjis J. Denno, MD, Shatha Denno and Fayka Dallo ("**Claimants**") were represented by Jerome Olitt, Arbitration and Mediation Specialists, Stamford, Connecticut.

Sands Brothers & Co, Ltd. ("**Sands Brothers**"), Steven Brett Sands ("**Steven Sands**") and Martin Scott Sands ("**Martin Sands**") were represented by Richard A. Roth, Esq., The Roth Law Firm, New York, New York.

James A. Brodie ("**Brodie**") was represented by Norris D. Wolff, Esq., Kleinberg, Kaplan, Wolff & Cohen, P.C., New York, New York.

### **CASE INFORMATION**

The Statement of Claim was filed on or about August 20, 2003. The Submission Agreement of Claimants, Jerjis J. Denno, MD, Shatha Denno and Fayka Dallo, was signed on or about August 20, 2003. Claimants filed a Motion to Dismiss the Counter Claims on or about December 22, 2003. Claimants' Amended Statement of Claim was filed on or about January 30, 2004. On or about May 26, 2004, Claimants filed their Response to Respondents, Steven and Martin Sands, Cross Motion to Dismiss.

The Statement of Answer, Counter Claim, and Third Party Claim were filed by Respondent, Sands Brothers & Co, Ltd., on or about December 10, 2003. Respondents, Sands Brothers, Steven Sands and Martin Sands, filed their Response to the Motion to Dismiss the Counter Claims on or about February 13, 2004. On or about April 27, 2004, Respondents, Steven and Martin Sands, filed their Answer to the Amended Statement of Claim and Cross Motion to Dismiss. On or about July 27, 2004, Respondents, Sands Brothers, Steven Sands and Martin Sands, Filed a Motion to Stay. Respondent, Sands Brothers, Steven Sands and Martin Sands filed a Response to Brodie's Motion for Sanctions on or about October 25, 2005. On or about December 14, 2004, Respondents, Sands Brothers, Steven Sands and Martin Sands, filed a Response to the Motion to Impose Additional Sanctions.

The Statement of Answer to the Third Party Claim and Counter Claim were filed by Respondent, James A. Brodie, on or about March 23, 2004. The Submission Agreement of Respondent, James A. Brodie, was signed on or about March 22, 2004. On or about May 4, 2004, Brodie filed a Response to Respondents, Steven Sands and Martin Sands Cross Motion to Dismiss. On or about July 19, 2004, Brodie filed a Response to Respondents Motion to Stay. Brodie filed a Motion for Sanctions on or about October 7, 2004. Brodie filed a Reply to the Response to the Motion for Sanctions on or about October 25, 2004. On or about December 8, 2004, Brodie filed Motion to Impose Additional Sanctions. On or about December 17, 2004, Brodie filed a Reply to the Response to the Motion to Impose Additional Sanctions.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty, suitability, churning, breach of contract, and failure to supervise. The causes of action relate to the recommendation and purchase of various unspecified equities, bonds, limited partnerships, and options.

Unless specifically admitted in its Answer, Respondent, Sands Brothers, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Statement of Claim failed to state a cause of action; Claimants' claims are barred by the doctrine of laches and statute of limitations; ratification by silence; lack of

standing; and ratification and approval in writing.

Unless specifically admitted in their Answer, Respondents, Steven Sands and Martin Sands, *denied the allegations made in the Amended Statement of Claim* and asserted affirmative defenses including the following: Statement of Claim failed to state a cause of action; Claimants' claims are barred by the doctrine of laches and statute of limitations; ratification by silence; lack of standing; and ratification and approval in writing.

Sands Brothers, Steven Sands and Martin Sands, asserted the following causes of action in their Counter Claim against Claimants: breach of contract and fraud in the inducement. The causes of action relate to several investments made by Claimants via subscription agreement. In addition, Sands Brothers, Steven Sands and Martin Sands, asserted that Claimants made material misrepresentations in various subscription agreements.

Sands Brothers, Steven Sands and Martin Sands, asserted indemnification as the cause of action in their Third party Claim against James Brodie.

Unless specifically admitted in his Answer, Third Party Respondent, James Brodie, denied the allegations made in the Third Party Statement of Claim and asserted affirmative defenses including the following: Statement of Claim failed to state a cause of action.

James Brodie asserted the following causes of action in his Counter Claim against Sands Brothers, Steven Sands and Martin Sands: frivolous, misuse of the arbitration procedure.

### **RELIEF REQUESTED**

Claimants requested from Respondents, Sands Brothers, Steven Sands and Martin Sands, an award in the amount of:

Actual/Compensatory Damages	\$1,250,000.00
Punitive/Exemplary Damages	\$ 100,000.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

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

Counter Claimant, Sands Brothers, requested from Claimants an award in the amount of:

Actual/Compensatory Damages	\$1,000,000.00
Attorneys' Fees	Unspecified

Third Party Claimant, Sands Brothers, requested from Third Party Respondent, James Brodie, an award in the amount of:

Actual/Compensatory Damages	\$1,250,000.00
Punitive/Exemplary Damages	\$ 100,000.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Third Party Respondent, James Brodie requested that the claims asserted against him be denied in their entirety and that he be awarded his costs, attorneys' fees, and sanctions against Sands Brothers, Steven Sands and Martin Sands.

Counter Claimant, James Brodie, requested from Counter Respondents, Sands Brothers, Steven Sands and Martin Sands, an award in the amount of:

Actual/Compensatory Damages	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified

#### **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 Respondents, Steven Brett Sands and Martin Scott Sands, have been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code").

Respondents, Sands Brothers & Co, Ltd., Steven Brett Sands and Martin Scott Sands, 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 are bound by the determination of the arbitration panel on all issues submitted.

On or about March 1, 2004, the Panel denied Claimants' Motion to Dismiss the Counter Claims.

On or about August 12, 2004, the Panel denied Respondents', Sands Brothers, Steven Sands and Martin Sands, Motion to Stay and granted Brodie's Motion to Compel.

On or about November 9, 2004, the Panel granted Brodie's Motion for Sanctions against Respondents, Sands Brothers, Steven Sands and Martin Sands, for failure to comply with the Panel's Order to Compel dated August 12, 2004. The Panel's Order is as follows:

After reviewing the instant motion and the above-mentioned Arbitration Order, the Arbitrators now file the following finds and ORDER:

1. Third Party Respondent, James Brodie's, Motion for Sanctions is granted as follows:
  - A.) Third Party Claimants, Sands Brothers, Steven Sands and martin Sands, jointly and severally, shall pay to James A., Brodie, sanctions in the amount of \$5,000.00 within ten (10) calendar days from the date of this ORDER along with the submission of the documents and request for information that they were previously ordered to produce in the Arbitration Panel's Order, dated August 12, 2004.
  - B.) Third Party Claimants, Sands Brothers, Steven Sands and martin Sands, jointly and severally, shall pay to James A., Brodie, sanctions in the amount of \$1,000.00 per day for each day, after the time specified in paragraph A, above, that they remain non-compliant with this Order for a maximum of fourteen (14) days.
  - C.) Additionally, Third Party Claimants, Sands Brothers, Steven Sands and martin Sands, jointly and severally, shall pay to James A., Brodie, reasonable attorneys' fees in the amount of \$1,000.00 within ten (10) calendar days from the date of this Order for the time and expense associated with the filing of the instant Motion for Sanctions.
2. Further, the Arbitration Panel will consider additional sanctions, including but not limited to additional monetary sanctions, striking claims or defenses, and making disciplinary referrals, against Third Party Claimants, Sands Brothers, Steven Sands and Martin Sands, should they continue to neglect or disobey an arbitral order.

On or about January 31, 2005, Claimants and Respondents, Sands Brothers, Steven Sands and Martin Sands, settled their claims.

On or about February 14, 2005, the Panel granted Third Party Respondent, James Brodie's, Motion to Dismiss. In addition, the Panel denied Brodie's Motion to Impose Additional Sanctions.

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 prehearings, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) *Third Party Claimants, Sands Brothers, Steven Sands and Martin Sands, claims against Third Party Respondent, James Brodie, are denied and dismissed with prejudice;*
- 2.) *The Counter Claim of Third Party Respondent, James Brodie, is denied and dismissed with prejudice;*
- 3.) *Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and*
- 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
Third Party Claim filing fee (Third Party Claimant, Sands Brothers)	= \$ 2,000.00
Counter Claim filing fee (Third Party Respondent, Brodie)	= \$ 250.00

#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Sands Brothers & Co, Ltd.

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

### **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:

Three (3) Pre-hearing sessions with Panel x \$1,200.00	= \$ 3,600.00
Pre-hearing conferences: April 26, 2004 1 session	
August 10, 2004 1 session	
January 24, 2005 1 session	
<b>Total Forum Fees</b>	<b>= \$ 3,600.00</b>

The Arbitration Panel has assessed \$1,200.00 of the forum fees jointly and severally to Jerjis J. Denno, MD, Shatha Denno and Fayka Dallo.

The Arbitration Panel has assessed \$1,200.00 of the forum fees jointly and severally to Sands Brothers & Co, Ltd., Steven Brett Sands and Martin Scott Sands.

The Arbitration Panel has assessed \$1,200.00 of the forum fees to James Brodie.

### **Fee Summary**

Claimants, Jerjis J. Denno, MD, Shatha Denno and Fayka Dallo, are jointly and severally liable for:

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

Respondent, Sands Brothers & Co, Ltd., is liable for:

Third Party Claim Filing Fee	= \$ 2,000.00
<u>Member Fees</u>	<u>= \$ 8,550.00</u>
<b>Total Fees</b>	<b>= \$ 10,550.00</b>
<u>Less payments</u>	<u>= \$ 10,550.00</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

Respondents, Sands Brothers & Co, Ltd., Steven Brett Sands and Martin Scott Sands, are jointly and severally liable for:

Forum Fees	= \$ 1,200.00
Total Fees	= \$ 1,200.00
Less payments	= \$ 450.00
Balance Due NASD Dispute Resolution	= \$ 750.00

Third Party Respondent, James Brodie, is liable for:

Counter Claim Filing Fee	= \$ 250.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 1,450.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,450.00

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

#### **ARBITRATION PANEL**

Thomas D. Nagle - Public Arbitrator, Presiding Chair  
Sherry R. Wetsch, Esq. - Public Arbitrator  
Eli Bensky - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Thomas D. Nagle  
Thomas D. Nagle  
Public Arbitrator, Presiding Chair

February 17, 2005  
Signature Date

/s/ Sherry R. Wetsch  
Sherry R. Wetsch, Esq.  
Public Arbitrator

February 17, 2005  
Signature Date

/s/ Eli Bensky  
Eli Bensky  
Non-Public Arbitrator

February 17, 2005  
Signature Date

February 17, 2005  
Date of Service (For NASD office use only)

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Sherry R. Wetsch, Esq. - Public Arbitrator  
Eli Bensky - Non-Public Arbitrator

Consenting Arbitrators:

  
Thomas D. Nagle  
Public Arbitrator, Presiding Chair

17 FEB 2005  
Signature Date

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Sherry R. Wetsch, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Eli Bensky  
Non-Public Arbitrator

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Public Arbitrator

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Eli Bensky  
Non-Public Arbitrator

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Signature Date

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Signature Date

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Public Arbitrator, Presiding Chair

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Signature Date

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