

N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
One East Broward Boulevard  
Suite 1000  
Ft. Lauderdale, Florida 33301  
(305) 522-7391

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Irving Appelbaum )

Case No. 89-03336

Name of Respondent(s) )

K.W. Brown & Co., Inc. d/b/a )

K.W. Brown Investments )

Kenneth W. Brown )

Wendy Brown )

REPRESENTATION

For Claimant, Irving Appelbaum ("Appelbaum"): Russell Forkay, Esq. of Russell Forkay, P.A.

Respondents, Ken Brown, Wendy Brown, K.W. Brown & Co., Inc. d/b/a K.W. Brown Investments ("K.W. Brown"): were initially represented by Richard Doggett, Esq. of the Law Office of Richard G. Doggett, P.A. and were subsequently represented by Ken Brown.

CASE INFORMATION

Statement of Claim filed: November 28, 1989. Claimant's Submission Agreement signed: November 22, 1989.

Respondents, Ken Brown, Wendy Brown and K.W. Brown's, Statements of Answer filed: September 5, 1990. Respondents' Submission Agreements signed by Ken Brown and Wendy Brown on September 3, 1990, and by Ken Brown on behalf of K.W. Brown on September 4, 1990.

HEARING INFORMATION

On September 5, 1990; January 25, June 24, 25 and 26; September 30; November 1 and 22, 1991, in Fort Lauderdale, Florida, hearings lasting 14 sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for: fraud; breach of fiduciary duty; negligence; violation of Federal securities laws; and negligent supervision. Claimant alleged that Respondents' misrepresentations regarding the expected return on Claimant's investments, induced Claimant into granting Brown discretion to trade options and other securities on behalf of Claimant.

Respondents alleged that: Claimant was a sophisticated investor; the trading was consistent with Claimant's investment objectives; and the Claimant was aware of the risks involved. Respondents asserted the affirmative defenses of: lack of proximate cause; compliance with all regulatory requirements; assumption of risk; ratification and estoppel; failure to mitigate damages; and waiver.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$83,505.50, plus interest and costs.

Respondents requested dismissal of the claim.

#### OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the 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. Respondents, Ken Brown, Wendy Brown and K.W. Brown, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$25,000.00 inclusive of interest.
2. Claimant's request for costs is denied.

#### OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$7,000.00 (14 sessions x \$500.00 per session). Claimant is hereby assessed \$3,500.00. The NASD shall retain the \$350.00 hearing session deposit previously paid by Claimant in partial satisfaction of such fees. Respondents, Ken Brown and Wendy Brown and K.W. Brown, are hereby assessed \$3,500.00, jointly and severally. Additionally, Respondents, K.W. Brown, Ken Brown and Wendy Brown, are hereby assessed jointly and severally, the \$500.00 postponement fee for the hearing on September 5, 1990, which was postponed after one session.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

/s/

Eduardo J. Palacio, Esq.

Public

/s/

Harry Polansky

Public

/s/

Terrence W. Grant

Industry

Date of Decision: FEBRUARY 28, 1992