

NASD

N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Jack Kamzan

91-02222

Name of Respondents

H.D. Brous & Co.
Newbridge Securities, Inc.
Howard Brous

REPRESENTATION

For Claimant: Seth Lipner, Esq. and Herbert M. Deutsch of Deutsch & Lipner.

For Respondent, Newbridge Securities, Inc.: Thomas Lahiff, Esq. of Citicorp.

For Respondents, H.D. Brous & Co., Inc. and Howard D. Brous: Kevin T. Rover, Esq. of Morgan, Lewis & Bockius.

CASE INFORMATION

Statement of Claim filed: July 18, 1991.

Claimant's Submission Agreement signed on: July 28, 1992.

Statement of Answer filed by Respondent, Newbridge Securities, Inc. on: September 23, 1991.

Respondent, Newbridge Securities, Inc.'s, Submission Agreement signed on: September 23, 1991.

Joint Statement of Answer filed by Respondents, H.D. Brous & Co., Inc. and Howard D. Brous on October 10, 1991.

Respondent, H.D. Brous & Co., Inc.'s Submission Agreement signed on September 30, 1991.

Respondent, Howard D. Brous' Submission Agreement signed on September 30, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: July 28, 1992 - Two Sessions.
September 4, 1992 - Two Sessions.
September 10, 1992 - Two Sessions.

Hearing Location: NASD, Inc. - New York, NY.

CASE SUMMARY

Claimant alleged that he opened an account with Respondent, H.D. Brous & Co., Inc. ("Brous & Co.") because Howard D. Brous ("Brous") is his nephew and Claimant trusted him. Claimant alleged that he is an experienced investor with substantial net worth. Claimant alleged that he told Brous that he wanted to invest in safe municipal bonds, common stock and warrants of publicly held companies. Claimant alleged that he gave Brous the discretion to make investments and that Brous usually discussed the investments with him beforehand. Claimant alleged that the account statements were not sent to his California home, rather, two sets of statements were sent to his New York home.

Claimant alleged that Brous engaged in options transactions without his authorization. Claimant alleged that even after he told Brous to stop doing options in his account, this activity continued, and the Claimant suffered losses in his account and incurred margin interest as a result of this unauthorized trading.

Respondent, Newbridge Securities, Inc. ("Newbridge"), maintained that they entered into a relationship with the Respondent, Brous & Co. whereby they would provide clerical and ministerial services associated with Brous & Co.'s accounts. Newbridge maintained that the address provided for the Claimant was his NY address, and that all confirmations and statements were sent to that address until the name and address file was changed to include the Claimant's California address.

Newbridge maintained that Brous was responsible for supervising all activity in its accounts and that Claimant's allegations are related to functions and responsibilities allocated to Brous & Co. Newbridge asserted a crossclaim against Brous & Co. for indemnification of any award Claimant may win against Newbridge Securities.

Respondents, Brous & Co. and Brous (collectively, "Brous Respondents"), maintained that Claimant's account was originally handled by Herzfeld & Stern where Brous was employed. Brous Respondents maintained that the Claimant traded options in this account. Brous Respondents maintained that all the options transactions in the Claimant's account were authorized by him, and were reflected in confirmations and monthly statements that were sent to both of the Claimant's addresses.

RELIEF REQUESTED

Claimant requested damages in the amount of \$140,932.13, \$300,000.00 in punitive damages, together with interest plus the costs of these proceedings.

Respondent, Newbridge, requested that the Claim be dismissed in its entirety and that costs, including attorney's fees, be assessed against the Claimant.

Respondents, Brous & Co. and Brous requested that the Claim be dismissed in its entirety and that costs, including attorney's fees, be awarded against the Claimant.

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.

Respondent, Newbridge Securities, Inc. moved at the hearing to dismiss Newbridge as a party in this action. The panel took the matter under advisement and later granted Newbridge's motion. Accordingly, the Claim against Newbridge was dismissed.

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. The Claim for damages pursuant to the losses incurred in 1989 is hereby denied.
2. Respondents, H.D. Brous & Co. and Howard D. Brous are hereby liable and shall pay to the Claimant damages in the amount of \$78,037.07 (SEVENTY EIGHT THOUSAND THIRTY SEVEN DOLLARS AND SEVEN CENTS) plus interest in the amount of \$8,263.25 (EIGHT THOUSAND TWO HUNDRED SIXTY THREE DOLLARS AND TWENTY FIVE CENTS).
3. Respondents, H.D. Brous & Co. and Brous are hereby liable and shall pay to the Claimant margin interest in the amount of \$1,271.21 (ONE THOUSAND TWO HUNDRED SEVENTY ONE DOLLARS AND TWENTY ONE CENTS).
4. The Claim for punitive damages is hereby denied.
5. All parties shall bear their respective costs of this action, including attorney's fees.
6. All other Claims and Counterclaims, if any, are hereby denied in their entirety.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

Non-refundable filing fee: \$ 200.00
Hearing Session Fees: \$4,500.00

1. Respondents, H.D. Brous and Brous & Co. are hereby liable for one-half of the total forum fees, in the amount of \$2,350.00. Claimant, Jack Kamzan is hereby liable for one half the forum fees of \$2,350.00.
2. Respondents, H.D. Brous & Co. and Brous are directed to pay the sum of \$2,350.00 (TWO THOUSAND THREE HUNDRED DOLLARS AND 00/XX) to the NASD, Inc.
3. Claimant is entitled to offset the amount of \$950.00 previously paid to the NASD from the amount now due. Accordingly, Claimant is directed to pay the sum of \$1,400.00 (ONE THOUSAND FOUR HUNDRED DOLLARS AND 00/XX) to the NASD, Inc.

Concurring Arbitrator's Signature

Name


George H. Hearn, Esq.

Public Chairperson

Date of Decision September 24, 1992

STATE OF New York ss.:

COUNTY OF New York

On this 22nd day of September 1992, before me personally appeared George H. Hearn, Esq. to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Margaret Nasco

MARGARET NASCO
Notary Public, State of New York
No. 43-4886066
Qualified in Richmond County
Certificate Filed in New York County
Commission Expires Aug. 31, 1993

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Concurring Arbitrator's Signature
Name


Francis J. LaSalle

Industry Arbitrator

Date of Decision September 24, 1992

STATE OF _____ ss.:

COUNTY OF _____

On this _____ day of _____ 19____, before me personally appeared Francis J. LaSalla to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Rosemarie Mancuso

ROSEMARIE MANCUSO
Notary Public, State of New York
No. 24-7689650
Qualified in Kings County
Term Expires May 13, 1964

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Concurring Arbitrator's Signature

Name


Elaine W. Nippo

Public Arbitrator

Date of Decision September 24, 1992

STATE OF NY ss.:

COUNTY OF NY

On this 21 day of Sept 1972, before me personally appeared Elaine W. Nippo to me known and known before me to be the individual described in and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.

Henry Murad

HENRY MURAD
Notary Public, State of New York
No. 0146100
Qualified in New York County
Commission Expires Nov. 30, 1974