

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

Lindsay H. Welling, Jr.

vs.

CASE #
91-03260

Name of Respondents

Brown (Alex) & Sons Incorporated
Robert V. Ballard

REPRESENTATION

Claimant, Lindsay H. Welling, Jr. ("Claimant"), appeared pro se.

For Respondent, Alex Brown & Sons Incorporated ("Alex Brown"), Robert H. Patterson, Esq.

Respondent, Robert V. Ballard ("Ballard"), appeared pro se.

CASE INFORMATION

Statement of Claim was filed on October 17, 1991.

Claimant's Submission Agreement was signed on October 11, 1991.

Statement of Answer was filed by Respondent Alex Brown on December 12, 1991.

Respondent's Submission Agreement was signed on December 10, 1991.

Statement of Answer was filed by Respondent Ballard on February 24, 1992.

Respondent's Submission Agreement was signed on February 18, 1992.

HEARING INFORMATION

Hearing Dates/Hearing Sessions:

July 13, 1992	-	Two sessions
July 27, 1992	-	Two sessions.

Hearing Location: Albany, New York.

CASE SUMMARY

Claimant states that he is a retired airline pilot who worked extremely

hard to provide for his retirement. Claimant states that the federal government had a mandatory retirement age and that his broker, Ballard, was aware of the fact and Claimant had no reason to question Ballard about where the securities purchased in his IRA accounts were actually traded. Claimant alleges that the securities purchased for his IRA accounts were traded on the Vancouver Stock Exchange, which exchange was unknown to him and which Forbes magazine referred to as the "Scam Capital of the World". Claimant further alleges that Ballard committed too much of his retirement funds into speculative securities traded on the Vancouver Stock Exchange. Some of these securities were Paladin, Cable Advertising, Ican Minerals, Ltd., Roddy Resources, Boulder Gold, Lionheart, Mikado Resources, and Goedome.

Claimant states that his former broker introduced him to Ballard and suggested he opened an account with Ballard. Claimant also alleges that he informed Ballard that his "investment philosophy was preservation of purchasing power and that preservation of capital was just as important but not the focus". Claimant also states that he informed Ballard that he "preferred long term investing and that no more than 10% of (his) funds could be invested in securities that had some special appeal for appreciation..." Claimant further states that for reasons unknown to him his two accounts were entitled "total return portfolio" and "precious metal portfolio". Claimant states that he informed Ballard that 5-10% of his portfolio should be invested in gold and platinum stocks.

Claimant alleges that in the 19 months that Ballard was his broker, 140 transactions occurred which generated commissions of \$30,000.00. Claimant states Ballard misrepresented that the securities purchased were unsolicited to cover up the unsuitable trading activities. Claimant further alleges that Alex Brown failed to supervise Ballard.

Respondent Alex Brown denies that it acted improperly in the management of Claimant's account and denies that it failed to properly supervise Ballard. Alex Brown contends that Claimant's financial planner highly recommended Ballard to Claimant and that the financial planner also arranged to have duplicates of Claimant's monthly statements sent to him. Alex Brown states that the accounts performed reasonably well and that Claimant made regular cash withdrawals from the accounts. Alex Brown further states that the overall net loss in the accounts was \$3,365.00.

Alex Brown argues that during the life of the account monthly statements were sent to Claimant and Claimant did not complain that his account was mishandled. Alex Brown further argues that when Ballard left Alex Brown to join Cowen & Co., Claimant transferred his account there and now three years after the transfer, Claimant complains that the securities were unsuitable for him. Alex Brown states that Claimant sustained losses in his accounts as a result of the October, 1987 stock market crash.

Alex Brown asserts five specific defenses, among them was that the claims are barred by relevant statutes of limitation and Section 15 of the Code of Arbitration Procedure. In its Motion to Dismiss, Alex Brown argues

that the alleged unsuitable purchase was on December 14, 1987, three years and ten months prior to the filing of this claim. Respondent further argues that unsuitability has been recognized as a violation of Rule 10b-5 of the Securities Exchange Act of 1934 which is covered by a one year/three year statute of limitations.

Respondent Ballard denies liability and denies the allegations of wrongdoing. Ballard states that his Answer is not to repeat Alex Brown's but to shed additional light on the matter. Ballard contends that the thirteen stocks referred to in the claim were primarily listed on Toronto Stock Exchange, Nasdaq, Vancouver Stock Exchange and Sydney Stock Exchange. Ballard states that the purpose of the account was not to trade individual stocks but to have a portfolio whose long term strategy was to provide an inflation hedge and to achieve longer term capital appreciation. Ballard contends that extensive due diligence was done on all companies listed.

Ballard alleges that all of his debts were discharged in bankruptcy and therefore, the NASD does not have jurisdiction over him.

Claimant in response to the Motion to Dismiss, argues that it does not include facts which he will bring out at the hearing. In response to Ballard's argument that the NASD does not have jurisdiction over him, Claimant maintains that he was not listed on Schedule A - Statement of all Debts of Debtor and therefore Ballard debt to Claimant was not discharged in bankruptcy.

RELIEF REQUESTED

Claimant requests an award of \$163,549.00, plus interest and costs incurred in bringing this case. Claimant also requests that the motions to dismiss be denied.

Respondents request that the claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND 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.

During the hearing, Alex Brown renewed it Motion to Dismiss and the panel granted this Motion before closing arguments began. The panel denied Ballard's Motion to Dismiss.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondents, Alex Brown & sons Incorporated and Robert V. Ballard are dismissed.

FORUM FEES

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

1. Forum fees in the amount of \$3,000.00 for 4 hearing sessions at \$750.00 per session are assessed and shall be borne equally by the three parties;

2. Therefore, Alex Brown is assessed \$1,000.00;

3. Ballard is assessed \$1,000.00; and

4. Claimant is assessed \$1,000.00. Claimant is further assessed \$200.00 non-refundable filing fee. Claimant deposited \$950.00 with the NASD and therefore owes a balance of \$250.00.

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

Concurring Arbitrator's Signature


Joseph Scardino, Esq.

Date of Decision: September 2, 1992

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondents, Alex Brown & sons Incorporated and Robert V. Ballard are dismissed.

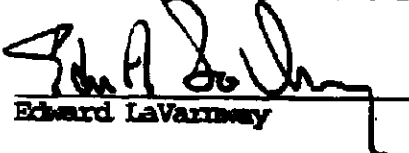
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Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature


Edward LaVarnway

Executed on

~~Retraction Decision:~~ 8/28/92

Date of Decision: September 2, 1992

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondents, Alex Brown & sons Incorporated and Robert V. Ballard are dismissed.

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Concurring Arbitrator's Signature


Edward T. Hill

Date of Decision: September 2, 1992