

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of Arbitration Between

Name of Claimant

William F. Hill as administrator of  
the Estate of Martha Clarke

vs.

Case # 92-00420

Name of Respondent

Alex Brown & Sons, Inc.

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**REPRESENTATION**

For Claimant, Will F. Hill as administrator of the Estate of Martha Clarke ("Claimant"), Robert J. Lane, Jr., from the law firm of Hodgson, Russ, Andrews, Woods & Goodyear.

For Respondent, Alex Brown & Sons, Inc. ("Respondent"), Nancy Palmer, Esq., in-house counsel.

**CASE INFORMATION**

Statement of Claim was filed on February 4, 1992.

Claimant's Submission Agreement was signed on February 26, 1992.

Respondent's Statement of Answer was filed on June 1, 1992.

Respondent's Submission Agreement was signed on May 20, 1992.

### HEARING INFORMATION

Pre-hearing Conference:	February 2, 1993	-	1 session
Hearing Dates/Sessions:	February 3, 1993	-	2 sessions
	February 4, 1993	-	2 sessions
	August 5, 1993	-	2 sessions
	August 6, 1993	-	2 sessions
	August 26, 1993	-	2 sessions

Hearing Location: Albany, New York.

### CASE SUMMARY

Claimant alleges that he is the nephew of Martha K. Clarke ("Mrs. Clarke") and is the administrator of her estate. Claimant alleges that at the time Mrs. Clarke opened her account with Respondent through James S. Hedges, an account executive employed by Respondent, Mrs. Clarke was 82 years old, an unsophisticated investor and who was suffering from a severe case of Alzheimer's disease. Claimant alleges that Hedges solicited Mrs. Clarke and caused her to close her account at Merrill, Lynch, Pierce, Fenner & Smith ("Merrill Lynch") and transfer all of her assets to Respondent firm. Claimant also alleges that Mrs. Clarke portfolio at Merrill Lynch was well-diversified, conservative and generally had low-risk investments and that Hedges sold most of the securities and purchased volatile, low-capitalized NASDAQ issues in which Respondent made a market.

Claimant contends that the securities purchased for Mrs. Clarke's account were unsuitable and that Respondent violated New York Stock Exchange Rule 405 and NASD Rules of Fair Practice Article III, Section 2 and churned Mrs. Clarke's account. Claimant also contends that Respondent knew or should have known Mrs. Clarke's condition at the time she transferred her account to the Respondent firm. Claimant further contends that because of Mrs. Clarke's disease, she was unable to understand the transactions which occurred in her account and was unable to "give effective authorization or consent to the transaction and that therefore, Respondent made unauthorized trades in her account. Claimant also contends that Respondent failed to supervise Hedges and that Mrs. Clarke sustained unnecessary federal and New York State tax liability totalling \$25,000.00.

Respondent maintains that this claim is barred by the Statue of Limitations and the claim fails to articulate any factual basis for the unsuitability claim except that the securities were traded over the NASDAQ Market. Respondent also maintains that the allegations of excessive commission is without merit as no commissions were charged except that the market price was marked up or marked down subject to strict supervision of the National Association of Securities Dealers, Inc. Respondent also interposes twelve affirmative defenses.

Respondent states that Hedges first met Mrs. Mrs. Clarke on or about January, 1979, when he was employed as a trust officer at Banker's Trust and acted as Mrs. Mrs. Clarke's investment advisor. Respondent also states that at that time Mrs. Clarke appeared well-informed about her financial affairs. Respondent further states that in 1983 when Hedges became employed by Alex Brown, he met with Mrs. Clarke to discuss transferring her account, but she instead transferred her account to Merrill Lynch and when her broker ceased his employment at Merrill Lynch, Hedges met with her again in 1985 concerning transferring her account to Alex Brown. Respondent maintains that during the time Mrs. Clarke maintained her account at Alex Brown, she appeared completely competent to manage her financial affairs and that the transactions in her account were suitable and consistent with her expressed investment objectives.

Respondent also states that in around May, 1987, one of Mrs. Clarke's nephews, P. David Hill, was given power of attorney and Hill was provided with all account statements. Respondent contends that Hill did not question the investments made in the account or discuss Mrs. Clarke's mental capacity. Respondent further states that Hedges was named Executor of Mrs. Clarke's estate but he withdrew as a result of badgering from Mrs. Clarke's nephews and their lawyer.

#### **RELIEF REQUESTED**

Claimant requests an award in excess of \$135,000.00 together with interest, costs, and disbursements (including the arbitration fee).

Respondent requests that the Statement of Claim be denied.

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

The parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

Prior to and during the pendency of the hearing in this matter, Respondent requested and was granted a postponement of the hearing scheduled for November 17 and 18, 1992 and a postponement of the hearings scheduled for March 15 and 16, 1993. This Panel reserved decision on the assessment of the postponement fees. This Panel now determined that the fee of \$750.00 for each postponement of each hearing is assessed against the Respondent.

**AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post-hearing submissions filed by both parties, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is hereby liable and shall pay Claimant **SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$17,500.00)**.
2. All other claims are denied.

**FORUM FEES**

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

Non-refundable Filing Fee:	\$200.00
Hearing Session Fees:	\$750.00 x 10 sessions = \$7,500.00
Pre-hearing Conference Fee:	\$300.00 x 1 session = \$300.00
Postponement Fees:	\$750.00 x 2 = \$1,500.00
Total Fees:	\$9,500.00

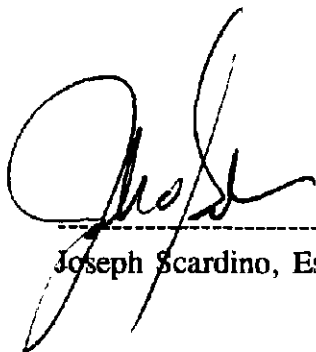
1. Claimant previously deposited \$950.00 and is entitled to a refund in that amount.
2. Respondent is assessed \$1,500.00 in fees for the postponement of two hearing dates as stated in the "Other Issues Considered and Decided" section of this decision.
3. Respondent shall satisfy the fees assessed by reimbursing Claimant \$950.00 and by remitting the balance \$6,750.00 to the NASD.

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

ARBITRATION PANEL

Joseph Scardino, Esq.	-	Public Chairperson
James J. Brearton, Esq.	-	Public Panelist
Robert A. Foy, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature



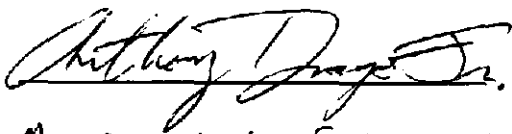
Joseph Scardino, Esq.

January 7, 1994  
Date of Decision

STATE OF NEW YORK  
COUNTY OF

S.S.:

On this    day of December, 1993, before me personally appeared Joseph Scardino, Esq. known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

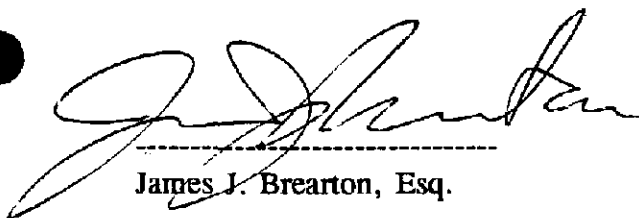


My Commission Expires: 11-25-99

ARBITRATION PANEL

Joseph Scardino, Esq.	-	Public Chairperson
James J. Brearton, Esq.	-	Public Panelist
Robert A. Foy, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature

  
James J. Brearton, Esq.

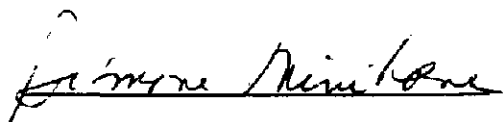
January 7, 1994

Date of Decision

STATE OF NEW YORK  
COUNTY OF

S.S.:

On this     day of December, 1993, before me personally appeared James J. Brearton, Esq. known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

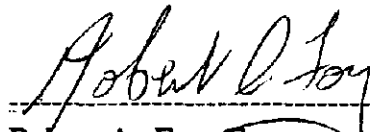




ARBITRATION PANEL

Joseph Scardino, Esq.	-	Public Chairperson
James J. Brearton, Esq.	-	Public Panelist
Robert A. Foy, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature

  
Robert A. Foy, Esq.

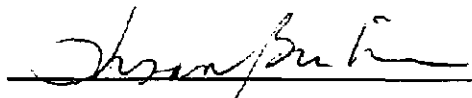
January 7, 1994

Date of Decision

STATE OF NEW YORK  
COUNTY OF

S.S.:

On this <sup>January 4</sup> 3 day of ~~December~~, 1994, before me personally appeared Robert A. Foy, Esq. known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



SUSAN BIRNBAUM  
Notary Public, State of New York  
No. 4984370  
Qualified in Westchester County  
Commission Expires 7/22/95