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N.A.S.D. AWARD

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

Name of Claimants

K.W. Brown & Company  
Kenneth W. Brown

92-02682

Name of Respondents

Cary, Marlene & Benjamin Fohrman, JTWROS

**REPRESENTATION**

For Claimants, K.W. Brown & Co. ("Brown & Co.") and Kenneth W. Brown ("K.W. Brown"): Russell L. Forkey, Esq., Deerfield Beach, Florida.

For Respondents, Cary Fohrman, Marlene Fohrman and Benjamin Fohrman: pro se.

**CASE INFORMATION**

Statement of Claim filed: 8/7/92.

Claimants' Submission Agreement signed on: 8/7/92.

Respondents did not file a Statement of Answer nor did they sign Submission Agreements (see "Other Issues").

**HEARING INFORMATION**

Hearing Dates/Sessions: 01-10-94/One (1) Session.  
10-24-94/One (1) Session.

Hearing Location: Fort Lauderdale, Florida.

9501047

### CASE SUMMARY

Claimants alleged the following: On or about March 11, 1987, Respondents, by and through Respondent, Cary Fohrman, deposited for sale 6,663 shares of American Israeli Paper Mills, Ltd.; that at the time the stock was deposited for sale with Claimants, Respondent, Cary Fohrman, under false pretenses, represented that the securities delivered represented 6,663 shares of American Israeli Paper Mills, Ltd., which was traded on the American Stock Exchange for approximately \$24. per share and valued at approximately \$159,000.00; that Respondent, Cary Fohrman, also intentionally and knowingly falsely omitted to inform Claimants and Concealed from Claimants material information by not disclosing to Claimants that the stock in question had undergone a reverse split in the year 1980 and because of the reverse split that Respondents were delivering only 137 shares of American Israeli Paper Mills, Ltd. having a value of approximately 3,344.25; that on August 13, 1987, Claimants delivered to Respondent, Cary Fohrman a check in the amount of \$99,093.76, representing payment to the Respondents of sale proceeds from 4,163 shares of the 6,663 delivered in by Respondents as follows: 63 shares at 24 1/4 ; 200 shares at 24 3/8 : 3900 shares at 24; that the check was cashed and endorsed purportedly by Marlene Fohrman, Benjamin Fohrman and Cary Fohrman.

Respondent, Cary Fohrman alleged the affirmative defense of Statute of Limitations.

### RELIEF REQUESTED

Claimants requested: Compensatory damages in the amount of \$99,093.76; interest on same in the amount of \$85,418.82; Attorneys' fees in the amount of \$42,000.00; and, interest on attorneys' fees in the amount of \$28,704.00

### OTHER ISSUES CONSIDERED & DECIDED

1. Respondent, Cary Fohrman, appeared at the first hearing session on January 10, 1994 at which time he made a Motion to Dismiss based upon the Statute of Limitations which, after considering the Motion and Claimants' objections, the panel denied. At that session, Mr. Fohrman also made a Motion to Adjourn in order to allow him time to retain Counsel which the panel granted.
2. All Respondents failed to appear at the final hearing session held on October 24, 1994. Based upon the evidence submitted in Arbitrator's Exhibit No. 1 and Claimants' Exhibit "A", the Notice of Final Hearing, this arbitration panel found that proper notice existed as well as jurisdiction pursuant to Section 12 (a) of the Code of Arbitration Procedure over Respondents. Pursuant to Section 29 of the Code of Arbitration Procedure and based upon evidence in Arbitrators'

9501047

Page 3  
NASD Award #92-02682

Exhibit No. 1. this arbitration panel proceeded with the hearing in Respondents' absence.

3. The parties present at the hearing 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, Cary Fohrman, Benjamin Fohrman and the Estate of Marlene Fohrman, are found liable, jointly and severally and shall pay to the Claimants the amount of \$99,093.76 plus interest at the legal rate of 12% per annum, from August 18, 1987 to October 24, 1994, in the amount of \$85,418.82 for a total due to the Claimants of \$184,512.58.
2. Respondents, Cary Fohrman, Benjamin Fohrman and the Estate of Marlene Fohrman, are also found liable, jointly and severally, and shall pay to the Claimants the further amount of \$34,500.00 for attorneys' fees incurred in Circuit Court and on appeal and \$7,500.00 for attorneys' fees incurred in the NASD proceeding, pursuant to Section 517.211, Florida Statutes.
3. Respondents, Cary Fohrman, Benjamin Fohrman and the Estate of Marlene Fohrman are further found liable, jointly and severally, and shall pay to the Claimants the further amount of \$7,500.00 for sanctions.

### **OTHER COSTS**

The parties shall bear all other costs and expenses incurred by them in connection with this proceeding.

9601047

Page 4  
NASD Award-#92-02682

**FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,500.00 (two (2) hearing sessions X \$750.00).

1. Respondents, Cary Fohrman, Benjamin Fohrman and the Estate of Marlene Fohrman, are hereby assessed, jointly and severally, Forum Fees, in the amount of \$1,500.00, \$750.00 of which shall be paid directly to the Claimants and \$750.00 of which shall be paid to the NASD, Inc.

2. The NASD shall retain the non-refundable filing fee of \$500.00 paid by the Claimants.

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

**ARBITRATION PANEL**

**Concurring Arbitrators' Signatures**

Name	Public/Industry
/s/	
<u>Monica I. Salis, Esq.</u>	Public/Chairperson.
/s/	
<u>Camille Besold</u>	Public/Panelist
/s/	
<u>Steven A. Hurst</u>	Industry/Panelist

Date of Decision: January 5, 1995