

**N.A.S.D. AMENDED AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

---

In the Matter of the Arbitration Between

Name of Claimant(s)

Edward Damm

92-03985

Name of Respondent(s)

Manchester Rhone Securities, Inc.  
William Trainor  
Andrew Boxer  
Bernard Musmand

---

**REPRESENTATION**

For Claimant:

Anthony J. Hom, Esq. of Philadelphia, PA.

For Respondents:

Manchester Rhone Securities, Inc. and William Trainor did not attend the hearing but Respondent William Trainor made an appearance through a letter dated February 11, 1993 in which he appeared pro se.

Andrew Boxer - Darren Lampert, Esq. of the law firm of Lampert & Lampert, New York, NY.

Bernard Musmand - Paul C. Kurland, Esq. of the law firm of Snow, Becker, Krauss, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed: December 22, 1992, Amended Statement of Claim filed on March 1, 1994.

Page 2  
Award #92-03985

Claimant's Submission Agreement signed on: November 16, 1992.

Letter dated February 9, 1993 from William Trainor to Vilna L. Henry filed on February 11, 1993.

Letter dated February 25, 1993 from Vilna L. Henry to William Trainor.

Statement of Answer filed by Respondent, Andrew Boxer on: January 25, 1993.

Respondent, Andrew Boxer's Submission Agreement signed on: January 20, 1993.

Respondent, Bernard Musmand's Submission Agreement signed on April 15, 1994.

Respondent Bernard Musmand' Response to Amended Statement of Claim filed on April 20, 1994.

The Respondent Manchester Rhone Securities, Inc. did not execute a Submission Agreement or file a Statement of Answer as required pursuant to Section 25 of the Code of Arbitration Procedure.

#### **HEARING INFORMATION**

Hearing Dates/Sessions: February 11, 1994 - one session  
July 15, 1994 - one session

Hearing Locations: NASD offices located in Philadelphia, PA  
on February 11, 1994.

NASD offices located in New York, NY on  
July 15, 1994.

#### **CASE SUMMARY**

Claimant alleged that Respondents purchased shares of stock without the claimant's authorization and executed trades involving warrants without his authorization. Claimant further alleged Respondents used high pressure sales practices and committed common law fraud by misrepresenting the facts and omitting to disclose the risks of investing, of the investment and the risk of loss of his entire investment and Respondents engaged in fraudulent behavior. Claimant further alleged Respondents breached the fiduciary duty owed to Claimant by churning Claimant's account and engaging in self dealing to generate

commissions. Claimant further alleged the Respondents were negligent; invested Claimant's funds in unsuitable investments given his investment objectives of preservation of principal and liquidity; breached the expressed and implied terms of its Customer Agreement and violated Federal Securities Laws. Claimant further alleged Respondents Manchester Rhone Securities, Inc. and William Trainor failed to properly supervise Respondents Andrew Boxer and Bernard Musmand.

Respondent Bernard Musmand maintained the transactions in question were executed with the Claimant's knowledge and permission and Respondent Bernard Musmand made recommendations to his clients based on Respondent William Trainor's recommendations and his reliance on Mr. Trainor's recommendations was based on the reasonable belief that Mr. Trainor was knowledgeable of the companies and Mr. Trainor's own large investment in the stock of these companies. Respondent Bernard Musmand further maintained he never knowingly misrepresented any material facts concerning the stock that Claimant bought or sold through Respondent and Respondent further denied churning the Claimant's account and denied that the investments Claimant made through Respondent Bernard Musmand were unsuitable as Claimant repeatedly told Respondent he wanted aggressive growth of his investments. Respondent Bernard Musmand further denied breaching his duty of care to Claimant and maintained at all times he complied with the express and implied terms of the customer agreement with Claimant and he did not violate the Federal Securities Laws. Respondent Bernard Musmand further maintained after a certain period of time Claimant faxed written confirmation of his consent to Respondent for each transaction, before it was executed and Respondent Bernard Musmand explained to Claimant the risks involved in purchasing speculative securities and Claimant informed him that he had previously traded in speculative securities and he authorized Respondent Bernard Musmand to purchase speculative securities on his behalf.

Respondent William Trainor maintained that he is not nor has he ever been a broker, dealer, salesperson, officer or a Director of a securities firm. In response, the Claimant maintained the Central Registration Depository indicated he was employed by Respondent Manchester Rhone Securities, Inc. at the time period in question.

Respondent Andrew Boxer maintained his involvement with the transactions in question was minimal at best and he acted responsibly and properly with respect to all transactions and he denied any and all liability claimed by Claimant from alleged misrepresentations, unsuitable investment recommendations and he acted in accordance with applicable law as well as industry standards and practices.

Respondent Andrew Boxer further maintained Claimant is barred from recovery by reason of his failure to timely object to the transactions complained of and Claimant's losses, if any, were caused or contributed to by Claimant and he is, therefore, responsible for any and all losses.

#### **RELIEF REQUESTED**

Claimant requested damages of \$76,036.00 plus interest from the date the losses were incurred to the date of the arbitration plus attorneys' fees, costs and any other damages the panel may deem just and fair.

Respondent Bernard Musmand requested the Claimant's Claim and Amended Claim be dismissed and he be awarded attorneys' fees and all costs associated with the arbitration, and alternatively, any other compensatory and consequential damages the panel may deem just and fair.

Respondent Andrew Boxer requested that Claimant's claims be dismissed in their entirety and that all arbitration fees, costs and attorneys' fees be assessed 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 original remains on file with the NASD.

The arbitration panel made the following rulings with respect to the Respondents Manchester Rhone Securities, Inc. and William Trainor:

In accordance with Section One of the NASD Code of Arbitration Procedure ("Code"), the panel had jurisdiction over these Respondents;

In accordance with Section 25 of the Code, the Respondents Manchester Rhone Securities, Inc. and William Trainor were served with the Statement of Claim and given an opportunity to respond which they failed to do;

In accordance with Section 21 and Section 26 of the Code, the Respondents Manchester Rhone Securities, Inc. and William Trainor were given due notice of the hearing procedure by regular and certified mail and failed to appear at the hearing;

In accordance with Section 29 of the Code, the arbitration panel determined in light of the foregoing information to proceed with the Respondents Manchester Rhone Securities, Inc. and William Trainor as parties.

### **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. Prior to the commencement of the second hearing session the arbitration panel was informed that the Claimant had entered into a settlement agreement with Respondent Andrew Boxer. The arbitration panel was also informed that Claimant had voluntarily withdrawn and discontinued his claims, with prejudice, against Respondent Bernard Musmand, without requiring any payment from Mr. Musmand.
2. The Respondents William Trainor and Manchester Rhone Securities, Inc. be and hereby are liable jointly and severally and shall pay to the Claimant the sum of \$18,800.00 plus simple interest at the rate of 9% per annum from October 3, 1991 until date of payment of the award.
3. The Claimant's request for reimbursement of travel expenses to conduct the hearing in New York is denied and each party shall bear their respective costs including attorneys' fees.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

2 sessions at \$500 = \$1,000 less Claimant's hearing session deposit  
(\$500.00) = net \$500.00 due

The Respondents Manchester Rhone Securities, Inc. and William Trainor be and hereby are liable jointly and severally shall pay to NASD the sum of \$500.00 to representing forum fees.

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

Page 6  
Award #92-03985

**ARBITRATORS' SIGNATURE**

Barbara A. Ash

Barbara A. Ash, Esq  
Public Arbitrator

---

Louis R. Matlack, PHD  
Public Arbitrator

Catherine Ladnier

Catherine Ladnier  
Industry Arbitrator

Date of Decision: November 30, 1994

Award #92-03985

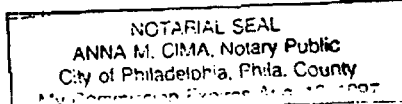
STATE OF: *Penn*

COUNTY OF: *Ph. La*

SS:

On this *07<sup>th</sup>* day of *Oct*, 1994, before me personally appeared **Barbara A. Ash, Esq.** known and 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.

*Anna M. Cima*



STATE OF:

SS:

COUNTY OF:

On this      day of      , 1994, before me personally appeared **Louis R. Matlack, PhD** known and 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.

\_\_\_\_\_

STATE OF:

SS:

COUNTY OF:

On this *23<sup>rd</sup>* day of *November*, 1994, before me personally appeared **Catherine Ladnier** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

*Mary Lou Carson*

MARY LOU CARSON  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES DEC. 26, 1995

Page 6  
Award #92-03985

**ARBITRATORS' SIGNATURE**

Barbara A. Ash  
Barbara A. Ash, Esq  
Public Arbitrator

Louis R. Matlack  
Louis R. Matlack, PHD  
Public Arbitrator

\_\_\_\_\_  
Catherine Ladnier  
Industry Arbitrator

Date of Decision: November 30, 1994



Award #92-03985

STATE OF:

*Penn*

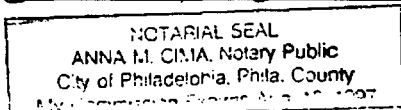
COUNTY OF:

*Ph. La*

SS:

On this *07<sup>th</sup>* day of *Oct*, 1994, before me personally appeared **Barbara A. Ash, Esq.** known and 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.

*Anna M. Lima*



STATE OF:

*New Jersey*

SS:

COUNTY OF:

*Camden*

On this *22* day of *Nov.*, 1994, before me personally appeared **Louis R. Matlack, PhD** known and 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.

*Jose R. Velez*

JOSE R. VELEZ  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires 12-07-98

STATE OF:

SS:

COUNTY OF:

On this    day of                   , 1994, before me personally appeared **Catherine Ladnier** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

\_\_\_\_\_