

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration BetweenName of Claimant

Alfred G. Brand

93-01698

Name of RespondentsBarry Champney
Robert Brown

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 28, 1993, Claimant Alfred G. Brand, who appeared Pro Se, alleged that in February, 1991 Respondent Robert Brown telephoned Claimant to say he had a financial emergency at which time, Respondent Robert Brown asked to borrow \$2,000.00 for a short period of time, whereby Respondent Robert Brown came to Claimant's home that same day and together they went to Columbia Savings Bank where Respondent Robert Brown received the money. Claimant further alleged that after three months passed without any repayment, he requested a promissory note from Respondent Robert Brown, which was received dated March 15, 1992. Claimant contended that in October, 1992, after more than 18 months without any repayment, he approved a letter written by his son, Warren Brand, to Respondent Robert Brown's employer, Respondent Barry Champney, branch manager, Vantage Securities, Inc. informing him of Respondent Robert Brown's actions. Claimant contended that Respondent Barry Champney responded in a letter dated November 9, 1992, and the following week, both Respondents telephoned him to discuss the situation, at which time, Claimant informed them they should speak to his son, Warren. Claimant further contended that he received a letter from Respondent Barry Champney dated November 17, 1992, which stated that the situation is a purely personal matter; however, Respondent Robert Brown was never just a personal friend of Claimant's. Claimant asserted that Respondent Robert Brown became his stock broker in 1987 when his wife passed away because a broker became necessary to adjust stocks and the financial circumstances which arose at that time, whereby Respondent Robert Brown would call Claimant on occasion to speak of his ministry. Claimant further contended that on November 19, 1992 his son Warren called Respondent Barry Champney and subsequently, on November 20, 1992 Respondent Barry

Champney returned the call, at which time, Respondent Barry Champney stated that he was not at liberty to discuss the matter with Warren and further stated that he was told to deal only with Claimant. Claimant further alleged that on November 20, 1992 Respondent Robert Brown did call his son, Warren to inform him that he intended to repay the entire amount by December 31, 1992. Claimant further contended that on December 18, 1992 Respondent Robert Brown again called Warren stating that he may not be capable of repaying the entire amount by December 31, 1992 but it would definitely be paid by January 15, 1993 but if it was not paid in full, Respondent Robert Brown would send an interest payment. Claimant further asserted that on January 9, 1993, a postal money order for \$200.00 and covering note was sent by Respondent Robert Brown; however, the remainder remains unpaid although duly demanded.

Respondent Barry Champney, by and through his counsel Charles P. Axelrod of Goldstein, Axelrod & Digioia, New York, NY, maintained that this claim is not based upon the purchase or sale of any securities or the handling of any brokerage account of Claimant, Alfred G. Brand, and the claim is solely and exclusively based upon a personal loan in the amount of \$2,000.00 made by Claimant to Respondent Robert Brown in February, 1991. Respondent Barry Champney further maintained that there is no dispute that Claimant at no time dealt with Respondent Barry Champney relating to this loan or that he ever had any knowledge, prior to October, 1992; 18 months after the fact, that this loan had been made by Claimant to Respondent Robert Brown. Respondent Barry Champney contended that the sole and only reason that he is a Respondent in this arbitration is because he was the branch manager of the Melville office of Vantage Securities, Inc., n.k.a. Reich & Co., Inc., and to whom Claimant's son wrote for the sole purpose of informing Respondent Robert Brown's then employer of Respondent Robert Brown's actions. Respondent Barry Champney further contended that it is clear from the Statement of Claim and exhibits that he had no involvement with, knowledge of or responsibility for the loan and there is no legal claim asserted against him, thus Respondent Barry Champney should be dismissed.

Respondent Robert Brown failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Alfred G. Brand requested the sum of \$2,000.00 in actual damages.

Respondent Barry Champney requested the claim be dismissed.

Respondent Robert Brown failed to file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent Robert Brown was served a copy of the Statement of Claim by regular mail on May 13, 1993 and given an opportunity to respond, which he failed to do. Respondent Robert Brown was notified on August 26, 1993, via certified mail of the selected arbitrator pursuant to Section 21 of the NASD Code of Arbitration Procedure. The signed certified mail receipt was returned to the NASD date stamped August 31, 1993, evidencing his receipt of this correspondence. Respondent Robert Brown failed to file an Answer to the Statement of Claim.

Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent Robert Brown was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Jay B. Baron, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 6, 1993, by the Respondent Barry Champney on May 24, 1993 and not by the Respondent Robert Brown as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

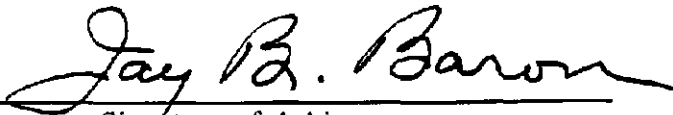
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Robert Brown is liable and shall pay to the Claimant Alfred G. Brand the sum of \$2,000.00 in damages.
2. Respondent Robert Brown is liable and shall pay to the Claimant Alfred G. Brand simple interest at the rate of 10% per annum from February 1, 1991 to February 1, 1992 and from January 1, 1993 to the date of payment of the award.
3. The claim of Claimant Alfred G. Brand against Respondent Barry Champney is dismissed.
4. The parties shall bear their respective costs.

5. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Alfred G. Brand shall be retained by the NASD, Inc. Respondent Robert Brown is liable and shall pay to the Claimant the sum of \$50.00. as reimbursement.

AFFIRMATION

I, JAY B. BARON, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: November 10, 1993

STATE OF: *New York*

SS:

COUNTRY OF: *Westchester*

On this 7th day of November 19 93, before me personally appeared Jay B. Baron 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.



PATRICIA B. WILD
Notary Public, State of New York
No. 4787415
Qualified in Westchester County
Term Expires June 95