

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Alex Brown & Sons, Incorporated

93-02201

Name of Respondent

Glenn Edward Backus

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REPRESENTATION

For Claimant Alex Brown & Sons, Incorporated ("Claimant"): Daniel J. Donovan, Associate General Counsel at Alex. Brown & Sons, Incorporated, Baltimore, MD.

For Respondent Glenn Edward Backus ("Respondent") Richard J. Morvillo, Esq. of the law firm of Crowell & Moring, Washington, D.C. and Karen M. Johnston, Esq. of the law firm of Richardson & Berlin, Washington, D.C.

CASE INFORMATION

Statement of Claim filed: June 1, 1993

Claimant's Submission Agreement signed on: May 28, 1993

Statement of Answer filed by Respondent on: September 24, 1993

Respondent's Submission Agreement signed on: August 10, 1993

HEARING INFORMATION

Hearing Dates/ Sessions:

June 21, 1994 - two sessions

June 22, 1994 - two sessions

June 23, 1994 - two sessions

Hearing Location: NASD District Office - Washington, D.C.

### CASE SUMMARY

Claimant alleged, among other things, that Respondent mishandled the accounts of Dr. Gottfried Haberler ("Dr. Haberler" or "Haberler"). Claimant alleged that Haberler's family came to Claimant complaining about excessive trading and unsuitable investments purchased for the accounts of Haberler. Claimant alleged, that based on its review of the Haberler accounts, Dr. Haberler and Respondent, it concluded that Respondent's handling of Haberler's accounts was inconsistent with Claimant's expectations. Claimant made a decision that it was best to settle this matter with the Haberler family and offered Haberler's family a settlement which they accepted. Claimant alleged that pursuant to its settlement agreement with the Haberler family, Dr. Haberler's account was credited with the amount of \$239,420.17. Claimant alleged that its settlement with Dr. Haberler over Respondent's mishandling of Dr. Haberler's accounts was fair and reasonable. Claimant alleged that Respondent is responsible for the mishandling of Dr. Haberler's accounts and that Respondent should reimburse it for the monies it was forced to pay to settle this matter with Haberler.

Respondent categorically denied all allegations of wrongdoing asserted by Claimant and maintained that Claimant has no legal right to seek indemnification from him. Respondent maintained, among other things, that Claimant settled a claim asserted by Haberler's family and that Dr. Haberler had never complained. Respondent maintained that Claimant agreed on a settlement with Dr. Haberler's family members without Respondent's knowledge or participation. Respondent maintained that he is not responsible to Claimant for the monies it paid to "settle" Dr. Haberler's family members' claims because he did nothing improper in his handling of Dr. Haberler's accounts. Respondent maintained that he handled Dr. Haberler's accounts consistent - with Dr. Haberler's expressed wishes, with Haberler's financial and personal circumstances and with Haberler's level of market sophistication. Respondent maintained that Dr. Haberler is a sophisticated investor who possessed knowledge of economics and the market to render him more capable of authorizing and understanding the activities in his accounts. Respondent maintained that all investments were fully discussed with Haberler, that Haberler understood the risks and that Haberler directed the trading activity in his accounts.

### RELIEF REQUESTED

Claimant requested: compensatory damages in the amount of \$239,420.17, plus prejudgment interest and the costs and expenses incurred in connection with

bringing this claim.

Respondent requested: that Claimant's claim be dismissed with prejudice and that Respondent be awarded all costs reasonably incurred in this proceeding.

### **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 originals remain on file with the NASD.

Respondent after the close of Claimant's case made a motion to dismiss Claimant's claim, this motion was denied.

### **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. That Respondent Glenn Edward Backus is liable to the Claimant and shall pay to the Claimant the sum of \$102,891.00; exclusive of interest.
2. That all other costs associated with this arbitration shall be borne by the respective party, except for the fees indicated herein.

### **FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

6 hearing sessions X \$750 = \$4,500

Forum Fees Assessed Against: Claimant and Respondent equally so that each is assessed forum fees in the amount of \$2,250. Claimant is assessed forum fees in the amount of \$2,250, however, Claimant is entitled to offset this amount with its

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hearing session deposit of \$750 previously deposited so that the amount due from the Claimant is \$1,500. Respondent is assessed forum fees in the amount of \$2,250.

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

Concurring Arbitrator's Signature  
Name

Public/Industry

Alexander I. Heckman  
Alexander I. Heckman, Esq

Industry

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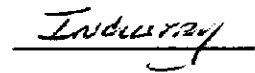
Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature

Name

  
Robert J. Benson

Public/Industry



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Concurring Arbitrator's Signature

Name

Bonnie K. Wachtel  
Bonnie K. Wachtel, Esq.

Public/Industry

Industry  
J

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