

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Marylou Kauder
Ed Kauder

NASD Arbitration
No. 93-02439

Name of Respondent(s)

Alex. Brown & Sons, Incorporated

REPRESENTATION

For Claimants: David C. Hinshaw, Esq., Gansinger, Hinshaw & Buckley, Los Angeles, California

For Respondent: Daniel J. Donovan, Esq., Alex. Brown & Sons Incorporated, Baltimore, Maryland

CASE INFORMATION

Statement of Claim filed: June 10, 1993

Claimants' Submission Agreement signed: June 11, 1993

Statement of Answer filed by Respondent: September 7, 1993

Respondent's Submission Agreement signed: September 7, 1993

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

September 26, 1994 (one session)

November 3, 1994 (one session)

Hearing Date(s)/Session(s): December 1, 1994 (two sessions)
 December 2, 1994 (two sessions)
 March 15, 1995 (two sessions)
 March 16, 1995 (two sessions)
 March 17, 1995 (one session)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimants alleged that Respondent Alex. Brown & Sons Incorporated (Alex. Brown), in handling Claimants' accounts, breached the Rules of Fair Practice of the National Association of Securities Dealers, Inc. (NASD) and the Rules of the New York Stock Exchange, Inc. Claimants further alleged: churning; improper supervision of Mark Taylor, Respondent's agent in charge of Claimants' accounts; failure to follow Claimants' instructions regarding diversification of positions in Claimants' accounts, margin trading and regarding Claimants' investment in Gensia Pharmaceuticals; breach of fiduciary duty; fraud; misrepresentations; negligence; negligent misrepresentations; and breach of contract.

Respondent denied any wrongdoing with respect to the handling of Claimants' accounts and alleged that the performance of Claimants' accounts at Alex. Brown was enormously successful. Respondent further alleged that Claimants were kept apprised of and gave their approval to the activity in their accounts, which were supervised at all times by the Claimants' personal accountant and financial advisor, Steve Blatt. Respondent further alleged that Alex. Brown and its representative, Mark Taylor acted properly at all times, and denied any liability with respect to Claimants' Claim.

RELIEF REQUESTED

Claimants requested that the amount of commissions Claimants paid to Respondent be refunded to them to the degree to which the panel determines that the total commissions generated in the accounts were excessive. Claimants asserted that the total commissions generated in the accounts exceeded \$100,000.00. Claimants further requested an award of the value of the appreciation of the 10,000 share core position of Gensia

Pharmaceuticals that Claimants would have enjoyed had it been maintained in the Claimants' accounts. Claimants asserted that they are informed and believe that the value of the appreciation of the 10,000 share core position of Gensia Pharmaceuticals exceeds \$500,000.00. Claimants further requested interest on these sums as the panel deems appropriate and requested punitive damages in an amount not less than \$500,000.00.

Respondent requested dismissal of Claimants' claims in their entirety, and requested that all fees and costs be imposed on Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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, the evidence presented at the hearing and post-hearing submissions, a majority of the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent's Motion to Dismiss Claimants' claims is denied.
2. Respondent is liable for and shall pay to Claimants the sum of \$72,500.00 in compensatory damages and in satisfaction of Claimants' claims.
3. Claimants' claim for punitive damages is denied.
4. The panel has determined that Respondent's counsel caused Mark Taylor to disregard the panel's subpoena executed on or about November 3, 1994. Pursuant to Section 35 of the NASD Code of Arbitration Procedure, Respondent is liable for and shall pay to Claimants the sum of \$500.00 as reimbursement of Claimants' attorney's fees and shall pay to Claimants the sum of \$350.00 as reimbursement of Claimants' expert fees incurred for the lost

hearing session during the morning of December 1, 1994 because of the absence of Mark Taylor.

5. The parties shall each bear their respective costs of this proceeding.

FORUM FEES

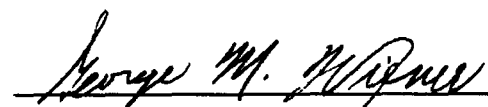
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$1,000.00 hearing session deposit previously deposited by Claimants. Forum fees are assessed against: Respondent, in the amount of \$9,600.00, calculated as follows: Two pre-hearing sessions times \$300.00/session plus nine hearing sessions times \$1,000.00/session.

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
George M. Wiener, Esq.	Public Arbitrator
Dawn M. Spears	Public Arbitrator
William C. Richardson	Industry Arbitrator

Concurring Arbitrators' Signatures


George M. Wiener, Esq.

Dawn M. Spears

Dissenting Arbitrator

William C. Richardson

Served 6/19/95

Date of Decision: MAY 20, 1995

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Date of Decision: _____