

## NASD AWARD

### Claimants

Helen Woodworth

### Respondents

Jonathan Alan & Co, Inc. and  
Robert Pearlman

Case Number 93-02557

## REPRESENTATION

For Claimant, Helen Woodworth ("Woodworth"): John R. Kiefner, Esq. of Riden, Earle & Kiefner St. Petersburg, Florida.

For Respondent, Jonathan Alan & Co., Inc. ("Jonathan Alan"): Mitchel Feinglas of Jonathan Alan, Bedford, New York.

Respondent, Robert Pearlman ("Pearlman") was pro se.

## CASE INFORMATION

Statement of Claim filed: June 29, 1993. Claimant's Submission Agreement signed: June 25, 1993.

Respondent, Pearlman's Statement of Answer filed: October 7, 1993. Respondent, Pearlman's Submission Agreement signed by Pearlman on July 27, 1993.

Respondent, Jonathan Alan did not file a Statement of Answer or sign a Submission Agreement as required by Sections 12 and 25 of the Code (See "Other Issues").

## HEARING INFORMATION

On June 15, 1994, in Tampa, Florida, a hearing lasting one session was conducted.

### CASE SUMMARY

Claimant alleged that: in October 13, 1989, Claimant subscribed to a \$100,000.00 debenture which, according to the prospectus, Jonathan Alan was to issue and continue actively offering until the December 31, 1989 termination date; Claimant's instructions as to the debenture were that her \$100,000.00, scheduled to be received in three parts, was to be deposited and held in her money market account at the Jonathan Alan clearing firm until the debenture closing date at which time the funds were to be withdrawn; Respondents ignored her instructions and, without her authorization, deducted the \$100,000.00 from her account in three installments prior to the December 31, 1989 termination date; Jonathan Alan defaulted by not issuing and not continuing the active offering of the debenture units by the December 31, 1989 termination date. Claimant alleged that Respondents breached their fiduciary duty and placed Claimant in an unsuitable and speculative investment and failed to follow her instructions.

Respondent, Pearlman, denied all allegations of wrongdoing and alleged that: the debenture offering stated that the full subscription price was to be paid with the signed debenture application; the funds were deducted with Claimant's authorization; and otherwise alleged that any wrongdoing was on the part of Jonathan Alan rather than Pearlman.

Respondent, Jonathan Alan failed to file an Answer and did not appear at the hearing to defend.

### RELIEF REQUESTED

Claimant requested damages in the amount of \$100,000.00 plus interest, attorney's fees, and costs.

Respondent, Pearlman requested dismissal of the claim.

Respondent, Jonathan Alan failed to file an Answer and did not appear at the hearing to defend.

### OTHER ISSUES CONSIDERED AND DECIDED

1. Jurisdiction exists pursuant to Sections 12 and 25 of the NASD Code of Arbitration Procedure ("Code").
2. This panel finds that Respondent, Jonathan Alan was required to file a Statement of Answer and sign a Submission Agreement pursuant to Sections 12 and 25 of the Code, Jonathan Alan being an NASD member firm at the time this controversy arose.

3. For the reasons set forth in the record of proceedings, this panel finds service upon and due notice to Jonathan Alan. The NASD has made every effort to locate and serve Jonathan Alan with notice of this arbitration as demonstrated by the evidence contained in Arbitrator's Exhibit #2.
4. Claimant has 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 Claimant has agreed to receive a conformed copy of the award while the originals remain on file with the NASD.
5. On February 17, 1994, Respondent, Pearlman filed for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code. Pursuant to the automatic stay provision of said Bankruptcy Code, Pearlman was dismissed from this arbitration, without prejudice to the Claimant.

#### AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, and Respondent, Jonathan Alan neither appearing at the hearing nor requesting any adjournment thereof, notwithstanding its knowledge of this arbitration as evidenced in the record of proceedings, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Jonathan Alan is found liable and shall pay to Claimant the amount of \$100,000.00, plus interest at the legal rate of 12% per annum pursuant to Section 517.211, Florida Statutes in the amount of \$54,000.00 for a total due to the Claimant of \$154,000.00.
2. Respondent, Jonathan Alan is also found liable for attorney's fees pursuant to Section 517.211, Florida Statutes. The panel leaves the amount of such attorney's fees to be decided by an appropriate court of competent jurisdiction.
3. Claimant's request for costs is denied.

#### OTHER COSTS

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

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$500.00 (1 session x \$500.00 per session).

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1. Respondent, Jonathan Alan is hereby assessed \$500.00 payable to the National Association of Securities Dealers, Inc..
2. The NASD shall retain the non-refundable filing fee of \$150.00 paid by the Claimant.
3. The NASD shall refund to Claimant the \$500.00 hearing session deposit previously paid by Claimant.
4. Respondent shall reimburse the Claimant \$150.00 for the non-refundable filing fee.

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

Concurring Arbitrator(s) Signature(s)

Public/Industry

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James A. Cormack

Public/Chairman

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Jean M. Lang

Public

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James R. Boyer

Industry

Date of Decision:

7-15-94