

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimants**

Joan Brunwasser  
Joan Brunwasser, C.F./Yael R. Brunwasser  
Joan Brunwasser, C.F./Ariella Brunwasser  
Prudential Securities C.F./Joan Brunwasser  
Prudential Securities C.F./Rafi Brunwasser  
Rafi Brunwasser C.F./Hanifen Imhoff Unif.

93-04559

**Name of Respondent**

D.H. Blair & Company, Inc.

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**Representation of Parties**

Claimants Joan Brunwasser and Rafi Brunwasser (hereinafter "Claimants") were represented at the hearing by James S. Gordon, Esq. of James S. Gordon, Ltd., Chicago, Illinois.

Respondent, D.H. Blair & Company, Inc. (hereinafter "Respondent") was represented at the hearing by Todd C. Steckler, Esq. of Bachner Tally Polevoy & Misher, New York, New York.

**Case Information**

Claimant's Statement of Claim was filed on November 1, 1993. Claimant's Submission Agreement was signed on October 28, 1993.

Respondent's Statement of Answer was filed on March 14, 1994. Respondent's Submission Agreement was signed on March 10, 1994.

**Hearing Information**

A prehearing conference was held on November 2, 1994 for one (1) session with the chairman of the panel.

The hearing was held on January 17, 1995 for two (2) sessions and on January 18, 1995 for two (2) sessions for a total of four (4) hearing sessions.

### **Case Summary**

Claimants alleged in their Statement of Claim that Respondent engaged in the following violations: violation of the Rules of Fair Practice, recommending unsuitable investments, undertaking transactions for the benefit of D.H. Blair and/or its account representatives rather than for claimants, breach of fiduciary duty, and fraud.

Respondent stated in their Answer that claimants are experienced investors. Respondents further stated that claimants are attempting to obtain monetary settlement for investment losses resulting from the risks of investing, rather than from any wrongdoing by Respondent.

### **Relief Requested**

Claimants requested an entry of an order requiring D.H. Blair & Co., Inc. to specify and disclose with particularity the markup, spread, or commission earned on each securities transaction for each account of claimants; entry of judgment against D.H. Blair in the amount of the actual damages sustained by claimants, in the amount of \$187,000.00, plus prejudgment interest thereon at the rate of 7% computed from the date on which each unlawful investment was made, plus such damages as claimants shall have sustained by virtue of excessive spreads, markups or commissions earned by respondent on transactions in their accounts; and entry of judgment for punitive damages against D.H. Blair in the amount of three times the actual damages sustained by claimants in the amount of \$561,027.00.

Respondent requested that the panel dismiss the statement of claim in its entirety, award D.H. Blair its costs and expenses, and award D.H. Blair such other and further relief as is just and proper.

### **Other Issues Considered and Decided**

The parties present at the hearing have agreed that the Award in this matter may be executed by 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.

**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. Claimant's Statement of Claim is denied and dismissed in its entirety;
2. Each of the parties shall bear their own costs and expenses, including attorney's fees, other than those specifically enumerated for herein.

**Forum Fees**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

two hearing sessions X \$1000 = \$2000 minus \$1000 hearing session deposit = \$1000 plus \$300 for the prehearing conference session = net \$1300 due to the NASD.

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$250, and shall retain the hearing session deposit in the amount of \$1000 previously paid to the NASD by the Claimants.

The additional forum fees in the amount of \$1300 are assessed against Claimants in the sum of \$650 and against Respondent in the sum of \$650.

The additional forum fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

**By The Arbitration Panel:**

Dated:

3/11/95

s/s Charles B. Melby, Esq.  
Charles B. Melby, Esq.  
Presiding, Public Arbitrator

3/8/95

s/s Jason R. Levine, Esq.  
Jason R. Levine, Esq.  
Public Arbitrator

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3/7/95

s/s Thomas E. Haviland, Jr.  
Thomas E. Haviland, Jr.  
Industry Arbitrator

Date Award Served By The NASD: 3/20/95