

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimants**

Matthew & Sally Stump Jtten et al.

93-04860

**Name of Respondents**

Brown (Alex) & Sons Incorporated  
Stephen Gritzan

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**REPRESENTATION**

Claimants Matthew and Sally Stump appeared at the hearing pro se.

Respondent Alex Brown & Sons Incorporated ("Alex Brown") was represented at the hearing by Robert E. Patterson, Esq. of Alex Brown & Sons Incorporated, of Baltimore, Maryland.

Respondent Stephen Gritzan ("Gritzan") did not appear at the hearing.

**CASE INFORMATION**

The Statement of Claim was filed with the NASD by Claimants Matthew and Sally Stump on November 22, 1993. The Uniform Submission Agreement was signed by Matthew and Sally Stump on November 5, 1993.

The Statement of Answer was filed by Respondent Alex Brown on January 31, 1994. The Uniform Submission Agreement was signed by Robert F. Price, Managing Director, on behalf of Alex Brown on January 27, 1994.

Respondent Gritzan did not submit an answer, and did not execute a Uniform Submission Agreement. (See Other Issues).

**HEARING INFORMATION**

The hearing was held on January 31, 1995, at the NASD Executive Office in Washington, D.C. for a total of two (2) hearing sessions.

### **CASE SUMMARY**

Claimants Matthew and Sally Stump stated in their Statement of Claim that during 1991 and 1992 they deposited with Respondents Alex Brown and Gritzan over \$30,000 to invest with the understanding that any stocks purchased would be quickly sold. Claimants alleged that Respondents failed to follow their instructions to sell a block of Metallurgical stock. Additionally, Claimants alleged that Respondents failed to sell 1,000 shares of Vestar stock according to their instructions, due to a secretarial error. Claimants stated that as a result of Respondents' failure to sell these positions, they incurred losses in their account.

Respondent Alex Brown in its Answer requested that the Statement of Claim be dismissed insofar as it relates to Alex Brown. Respondent Alex Brown stated in its Answer that Respondent Gritzan serviced Claimants' two accounts with Alex Brown from September 1991 until June 1992 when Gritzan resigned from Alex Brown to join another brokerage firm. Alex Brown also stated that Claimants transferred their accounts in December 1992 from Alex Brown to Respondent Gritzan's new firm so that Gritzan could continue acting as their broker. Alex Brown stated that they cannot be held responsible for the alleged failure to sell the block of Metallurgical stock, since the alleged failure to sell occurred after the stock had been transferred from Alex Brown to Respondent Gritzan's new firm. Alex Brown further stated that the Vestar stock was not sold because Claimants never entered an order to sell it. Additionally, Alex Brown stated that Claimants did not raise a complaint regarding the Vestar stock while the position continued to appear on the monthly account statements.

Respondent Alex Brown raised the following affirmative defenses in its Answer: failure to state a claim upon which relief can be granted; the Claimants controlled their accounts and are responsible for the transactions effected therein; the Claimants' claims are barred by the doctrines of estoppel, ratification and waiver, and by the applicable statute of limitations; and Claimants failed to mitigate their damages.

Respondent Gritzan did not file an answer to these allegations.

### **RELIEF REQUESTED**

Claimants requested damages in the amount of \$30,613.63, plus costs.

Respondent Alex Brown requested that the Statement of Claim be dismissed as it relates to Alex Brown, and that they be awarded their costs.

Respondent Gritzan did not answer the Statement of Claim and did not make a relief request.

### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made by the Claimant, Respondent Alex Brown, and

the NASD staff attorney, the panel has determined that Respondent Gritzan has been properly served with the Statement of Claim pursuant to Section 25 of the NASD Code of Arbitration Procedure (the "Code"). The panel also determined that Respondent Gritzan had received due notice of the hearing as required under Section 26 of the Code and that arbitration of the matter would proceed pursuant to Section 29 of the Code.

Respondent Gritzan did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code").

Respondent Alex Brown filed a request that the hearing be conducted in Washington, D.C. Claimants filed two responses, and Respondents responded. Pursuant to Section 26 of the Code of Arbitration Procedure ("the Code") and the NASD Guidelines for the Service of Pleadings, and after reviewing and considering all documentation submitted by the parties, the Director of Arbitration granted Respondent Alex Brown's request.

The parties have agreed that the Award in this matter may be executed by counterpart copies. The parties have also 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. The Statement of Claim filed by Claimants Matthew Stump and Sally Stump, is denied and dismissed in its entirety.
2. Each of the parties shall bear their own costs and expenses incurred, other than those specifically provided for herein.
3. Any relief not specifically provided for herein is denied.

### **FORUM FEES**

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

2 hearing sessions x \$400 = \$800.

Pursuant to Section 43(c) of the Code, the NASD shall retain the non-refundable filing fee in the

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amount of \$120, and the hearing session deposit in the amount of \$400 previously paid to the NASD by Claimants.

The panel has ordered that Respondents, jointly and severally, pay additional forum fees to the NASD in the amount of \$400.

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

**By The Arbitration Panel:**

Dated:

March 3, 1995

Michael Fischetti  
Michael Fischetti, Presiding  
Public Arbitrator

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Leonard E. Benade  
Public Arbitrator

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Theodore W. Urban, Esq.  
Industry Arbitrator

Date Award Served By the NASD: March 16, 1995

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**By The Arbitration Panel:**

Dated:

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3/4/95

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Michael Fischetti, Presiding  
Public Arbitrator

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Leonard E. Benade  
Public Arbitrator

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Theodore W. Urban, Esq.  
Industry Arbitrator

Date Award Served By the NASD: March 16, 1995

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Dated:

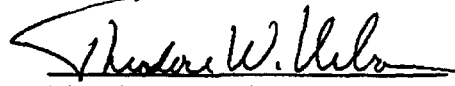
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Michael Fischetti, Presiding  
Public Arbitrator

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Leonard E. Benade  
Public Arbitrator

March 7, 1995

  
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Theodore W. Urban, Esq.  
Industry Arbitrator

Date Award Served By the NASD: March 16, 1995