

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Sands Brothers & Co., Ltd.

94-00067

Name of Respondent

Martin Rabovich

REPRESENTATION

For Claimant: Richard A. Roth, Esq. of Littman & Krooks, P.C., New York, New York.

For Respondent: Don B. Panush, Esq. of Jacoby & Meyers, New York, New York.

CASE INFORMATION

Statement of Claim filed: December 23, 1993.

Claimant's Submission Agreement signed on: December 28, 1993.

Statement of Answer filed by Respondent on: February 21, 1994.

Respondent's Submission Agreement signed on: March 7, 1994.

HEARING INFORMATION

Hearing Date / Sessions: November 9, 1994 / Two Sessions.

Hearing Location: National Association of Securities Dealers offices located in New York City, New York.

CASE SUMMARY

Claimant alleged that on or about January 2, 1993, the American Arbitration Association ("AAA") rendered an award in favor of a public customer, Roger W. Boswell, and against Claimant in the sum of \$95,099.46 in damages for the improper conduct and unauthorized trades made by Respondent in Boswell's account while Respondent was employed by Claimant. Claimant further alleged that on or about June 30, 1993, pursuant to the AAA award Claimant paid over to Boswell the sum of \$95,099.46. Claimant next alleged that on or about September 29, 1993 Claimant demanded the sum of \$95,099.46 from Respondent and that despite the demand, Respondent has failed to pay Claimants the sums due. Claimant alleged that on the basis of apportionment of responsibility Claimant is entitled to indemnification or contribution from Respondent for all of the award rendered by the AAA against Claimant. Claimant also alleged that the damages sustained by Claimant in favor of Boswell, were the result, in whole, of culpable conduct on the part of Respondent. Claimant further alleged that as an employee of Claimant, Respondent was a fiduciary and was obligated to the duties of good faith and fair dealing with respect to all accounts, including Boswell's, and that Respondent failed to properly perform his fiduciary responsibility and thereby breached his obligation to Claimant. In addition, Claimant alleged that Respondent exceeded his authority by engaging in unauthorized trades in Boswell's account without the permission of Boswell or Claimant. Claimant alleged that as an employee of Claimant, Respondent was under a contractual duty to properly perform his obligations to all third parties, including Boswell and that Respondent failed to fulfill those duties.

Respondent denied that damages sustained by Claimant in favor of Boswell were the result of culpable conduct by the Respondent. Respondent further denied that he had breached any fiduciary duties he owed to third parties or to Claimant. Respondent also denied that he had failed to perform his contractual duties to third parties and Respondent denied that he had failed to perform his duties and responsibilities to Claimant.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in the sum of \$95,099.46.
2. Interest.
3. Costs and disbursements of this action including reasonable attorneys' fees.

4. Such other relief as deemed just and proper.

Respondent requested:

1. Dismissal of Claimant's claim.
2. Such other and further relief, including attorneys' fees, as deemed appropriate.

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 claim is denied in full.
2. Each party shall bear its own respective costs, including attorneys' fees.

FORUM FEES

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

2 sessions X \$600 = \$1,200 minus hearing session deposit of \$600 = net \$600 due.

Forum fees Assessed Against:

Claimant is assessed \$1,200 which represents the total amount of forum fees due, less \$600 hearing session deposit paid by Claimant, leaving \$600 due. Claimant is liable and shall pay to the NASD the sum of \$600.

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

NASD Award #94-00067

Name

A. James Jacoby

Industry Panelist

James J. Noone

Industry Panelist

Sidney D. Krasner

Date of Decision: november 28, 1994

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NASD Award #94-00067

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared **A. James Jacoby** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

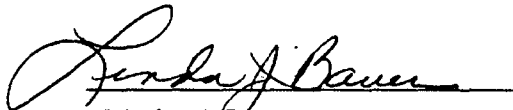
On this day of , 1994, before me personally appeared **James J. Noone** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF: New Jersey

SS:

COUNTY OF: Union

On this 22nd day of November , 1994, before me personally appeared **Sidney D. Krasner** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.


Linda J Bauer

LINDA J. BAUER
A Notary Public of New Jersey
My Commission Expires 11/11/96

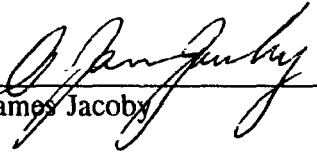
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Concurring Arbitrators' Signatures

Name

Industry Chairperson


A. James Jacoby

Name

Industry Panelist

James J. Noone

Name

Industry Panelist

Sidney D. Krasner

Date of Decision: November 28, 1994

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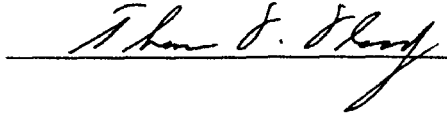
NASD Award #94-00067

STATE OF: *NEW YORK*

SS:

COUNTY OF: *NEW YORK*

On this *23* day of *NOV*, 1994, before me personally appeared **A. James Jacoby** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



THOMAS J. ALANDY
Notary Public, State of New York
No. 02161100001
Qualified in Orange County
Commission Expires April 30, 1996

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared **James J. Noone** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared **Sidney D. Krasner** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

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NASD Award #94-00067

Concurring Arbitrators' Signatures

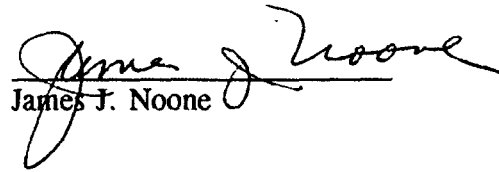
Name

Industry Chairperson

A. James Jacoby

Name

Industry Panelist



James J. Noone

Name

Industry Panelist

Sidney D. Krasner

Date of Decision: November 28, 1994

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NASD Award #94-00067

STATE OF:

SS:

COUNTY OF:

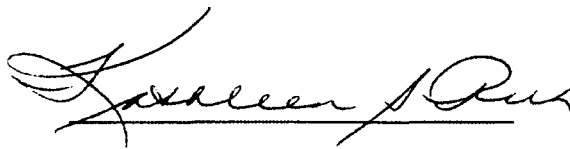
On this day of , 1994, before me personally appeared **A. James Jacoby** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF: *NY*

SS:

COUNTY OF: *Bergen*

On this *22* day of *November*, 1994, before me personally appeared **James J. Noone** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



KATHLEEN S. RUH
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES
STATE OF: **JAN. 18 1996**

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared **Sidney D. Krasner** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.
