

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

James J. White

94-00470

**Name of Respondents**

Alex. Brown & Sons Incorporated  
Jonathan Price

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**REPRESENTATION**

For Claimant James J. White, ("White"): Jan Douglas Atlas, Esq. and Douglas Paul Solomon, Esq. of Atlas, Pearlman, Trop & Borkson, P.A., Ft. Lauderdale, FL.

For Respondents Alex. Brown & Sons Inc. ("Alex Brown") and Jonathan Price ("Price"): Daniel J. Donovan, Esq. Corporate Counsel for Alex Brown, Baltimore, MD.

**CASE INFORMATION**

Statement of Claim filed on February 8, 1994.

Claimant's Submission Agreement signed on February 4, 1994.

Joint Statement of Answer filed by Respondents on May 17, 1994.

Respondents, Submission Agreement both signed on May 10, 1994.

**HEARING INFORMATION**

On March 1, 1995 and March 14, 1996 Pre-Hearing Conferences lasting two sessions were conducted via telephone with an arbitrator.

On May 14, 15, 16, and 17, 1996 hearings lasting eight sessions were conducted in Fort Lauderdale, FL.

## **CASE SUMMARY**

Claimant, alleged that he was a customer of Alex Brown between the years 1987 and 1993 with his account handled by Jonathan Price. Prior to July, 1992, claimant's account was substantially concentrated in the stock of Storage Technology, Inc. ("Storage"), Claimant's employer. In early July, 1992 claimant requested Price to research Phoenix Laser Systems, Inc. ("Phoenix"), a high tech company, at a time when Claimant's margin loan exceeded \$300,000. In reliance on representations made by Price, Claimant purchased over \$900,000 worth of Phoenix stock, ultimately owning approximately one percent (1%) of the outstanding stock of Phoenix, while Claimant's margin loan increased to more than \$1,200,000. Claimant alleged that Price failed to identify and bring to Claimant's attention significant and material risk factors revealed in Phoenix's 10K and 10Q documents relating to the ongoing viability of Phoenix. Claimant contends that as the price of Phoenix declined between July, 1992 and January, 1993 Price liquidated valuable Storage stock to satisfy margin calls, while urging Claimant not to sell Phoenix stock. Claimants further alleges, that Phoenix was a very speculative high risk investment, and was totally unsuitable for the Claimant. In addition, Claimant's account was overly concentrated in two high-tech speculative stocks, allowed to be excessively margined, Price misrepresented the value of Phoenix and clearly breached his fiduciary duty to Claimant. Alex Brown was negligent in its supervision of Price and wholly failed to comply with its own branch manager and compliance manuals regarding margin loan excesses and supervision of account executive.

Respondents' Alex Brown and Price deny each of the allegations asserted by Claimant. Respondents' contends that (i) Claimant White made each of the investment decisions in his account with Alex Brown and specifically, that he made all purchases of Phoenix on an unsolicited basis, after the security was brought to his attention by his accountant, (ii) Claimant was an experienced investor who knew and understood the import of the transactions he chose to make, including the import of making such transactions on margin, (iii) the losses incurred by Claimant where the result of market risk which he knowingly and willingly undertook, (iv) the transactions about which Claimant complains are consistent with his own previously established record of investing in large positions of a single security and (v) there were two distinct patterns regarding the investments in Claimant's account (i.e. he built large positions on his own and his broker recommended substantially smaller positions, based on Alex Brown research). Respondents expressly denies the Claimant's assertions that they recommended the purchase of Phoenix stock and the accumulation of a large position of such stock, encouraged its purchase on margin, refused Claimant's orders to sell, made misrepresentations about Phoenix and made representations that Claimant "could not lose" with an investment in Phoenix.

## **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$1,046,090, interest at the legal rate pursuant to FL. Stat. 517, the value of Storage stock to meet margin calls, attorneys' fees in the amount of \$102,279.74 together with all applicable costs and an award of punitive damages.

Respondents requested the dismissal of the Claim in its entirety, costs, attorneys' fees, and whatever additional relief is just and equitable.

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

The parties have 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 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 and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent, Jonathan Price, is found liable and shall pay to the Claimant the total amount of \$60,000.00.
- 2) Respondent, Alex. Brown & Sons, Inc., is found liable and shall pay to the Claimant the total amount of \$170,000.00.
- 3) Claimant's request for attorneys' fees is hereby denied.
- 4) Claimant's requests for interest, costs and punitive damages are hereby denied.
- 5) Respondents' requests for costs and attorneys' fees are hereby denied.

### **OTHER COSTS**

Other than as provided below, 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 \$8,600 (two pre-hearing conferences x \$300 plus eight sessions x \$1,000).

Claimant is hereby assessed \$4,300 for which the NASD shall retain the \$1,000 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$3,300.

Respondents, Alex Brown and Price, are hereby assessed \$4,300, jointly and severally, payable to the NASD.

The NASD shall retain the non-refundable filing fee of \$250 that was paid by the Claimant.

The Claimant is hereby assessed \$1,000 for one of its postponement request.

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

**Concurring Arbitrators' Signatures**

**Name**

**Public/Industry**

/s/

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John J. Hearn, Esq.

**Public**

/s/

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James D. MacDonald

**Industry**

Arbitrator Robert J. Hyman, Esq. dissents as to Items (1) and (2) of the Award and concurs with Items (3), (4) and (5) of the Award.

/s/

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Robert J. Hyman, Esq.

**Date of Decision:** July 15, 1996