

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

Arnold J. Cogan

vs.

Case #  
94-00600

**Name of Respondents**

Brown (Alex) & Sons Incorporated  
Richard D. Billera  
Robert Oram

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**REPRESENTATION**

For Claimant, Arnold J. Cogan ("Claimant"), Marc H. Edelson, Esq. from the law firm of Hoffman & Edelson, located in Jenkinstown, Pennsylvania.

For Respondents, Alex Brown & Sons, Incorporated ("Alex Brown"), Richard D. Billera ("Billera") and Robert Oram ("Oram") (collectively "Respondents"), Daniel J. DFonovan, Esq. in-house counsel at Alex Brown, located in Baltimore, Maryland.

**CASE INFORMATION**

Statement of Claim was filed on February 16, 1994.

Claimant's Submission Agreement was signed on January 4, 1994.

Claimant's reply to Respondents Affirmative Defenses was filed on May 23, 1994.

Claimant's Amended Statement of Claim was filed on June 22, 1994.

Claimant's reply to the Affirmative Defenses set forth in Respondents' Answer to the Amended Statement of Claim dated December 8, 1994.

Joint Statement of Answer was filed by Respondents on April 20, 1994.

Respondent, Alex Brown's, Submission Agreement was signed on April 21, 1994.

Respondent, Oram's, Submission Agreement was signed on April 4, 1994.

Respondent, Billera's, Submission Agreement was signed on April 26, 1994.

Respondents' Joint Answer to the Amended Statement of Claim was filed on September 20, 1994.

### **HEARING INFORMATION**

Hearing Dates/Sessions:    December 19, 1995 - 2 sessions  
                                     December 20, 1995 - 2 sessions  
                                     January 20, 1995    - 2 sessions

Hearing Location: NASD Offices located in New York, New York.

### **CASE SUMMARY**

Claimant alleges that he is elderly and self-employed and brings this claim to recover damages sustained from unsuitable investments and excessive trading made by Respondent Billera.

Claimant also alleges that the majority of the securities purchased were extremely risky bio-tech companies and that his account dropped from an approximate high of \$265,000.00 in January, 1992 to a low of approximately \$23,000.00 in 1993.

In his Amended Statement of Claim, Claimant states that he executed a "Trading Authorization Limited to Purchases and Sales of Securities" and later indicated his investment of objective as capital growth. Claimant contends, however, that Billera failed to disclose the risk involved.

Claimant contends that Respondents actions violated Section 10(b)(5) of the Securities Exchange Act of 1934 and gave rise to other common law causes of action.

Respondents denies the claims asserted by Claimant and interposes eight affirmative defenses.

Respondents state that Claimant opened his account in September of 1977 and executed a margin agreement in March, 1978. Respondents also state that Claimant indicated that his investment objective was capital growth and authorized Billera to enter transactions on his behalf. Respondents deny each and every allegations set forth in the Answer to the Amended Statement of Claim and assert ten affirmative defenses. Respondents assert that Claimant was Billera's customer since 1972 when Billera was employed by another firm. Respondents also assert that Claimant maintained a discretionary account which he transferred to the Respondent firm when Billera became employed there. Respondents further assert that Claimant expressly rejected Billera's strategy of investing capital gains in tax free municipal bond and/or treasury securities. Respondents maintain that Claimant instructed Billera to build the value of the account without regard to tax consequences or volume of trading and that the investments made were consistent with Claimant's express instructions.

Respondents allege that Claimant is a sophisticated professional, a licensed professional engineer, who holds a Bachelor of Science in Engineering from Cornell and a Masters in Business Administration from New York University. Respondents also allege that Claimant, in addition

to other positions, was a management consultant for and President of ROI Controls Corporation.

**RELIEF REQUESTED**

Claimant requests an award in excess of \$500,000.00 jointly and severally against the Respondents in amount equal to the value of the commissions and margin interest charged, with interest from the date of each trade together with the loss of value of the account caused by the in appropriate to transactions, plus punitive damages.

Respondents request that the claims be dismissed.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies and agreed to receive a conformed copy 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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents' Motion to Dismiss is granted as to Robert Oram, only.
2. All claims against Respondents, Alex Brown and Richard Billera, are denied.

**FORUM FEES**

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

Non-refundable filing fee: \$250.00

Hearing session Fee: \$6,000.00 (\$1,000.00 per hearing session)

Total Fees: \$6,250.00


1. Claimant is assessed a \$250.00 non-refundable filing fee. Claimant is further assessed \$3,000.00. Claimant previously paid \$1,250.00 and owes a balance of \$2,000.00.
2. Respondents are assessed \$3,000.00.

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

ARBITRATION PANEL

Ann C. Northern, Esq.	-	Public Chairperson
Carl W. Klemme	-	Public Panelist
Jimmy H.C. Wang	-	Industry Panelist

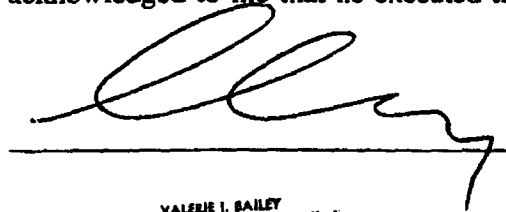
Concurring Arbitrator's Signature

  
Carl W. Klemme

Date of Decision: April 4, 1995

State of New York s.s.:  
County of New York

On this 7th day of March, 1995, before me personally appeared Carl W. Klemme known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



VALERIE I. BAILEY  
NOTARY PUBLIC, State of New York  
No. 24-4940383  
Qualified in Kings County  
Commission expires July 18, 1996

ARBITRATION PANEL

Ann C. Northern, Esq.	-	Public Chairperson
Carl W. Klemme	-	Public Panelist
Jimmy H.C. Wang	-	Industry Panelist

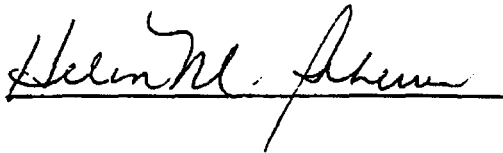
Concurring Arbitrator's Signature

  
Jimmy H.C. Wang

Date of Decision: April 4, 1995

State of New York s.s.:  
County of New York

On this      day of March, 1995, before me personally appeared Jimmy H. C. Wang known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.




HELEN M. SCHEUER  
Notary Public, State of New York  
No. 31-3362985  
Qualified in New York County  
Commission Expires \_\_\_\_\_

4-30-95

ARBITRATION PANEL

Ann C. Northern, Esq.	-	Public Chairperson
Carl W. Klemme	-	Public Panelist
Jimmy H.C. Wang	-	Industry Panelist

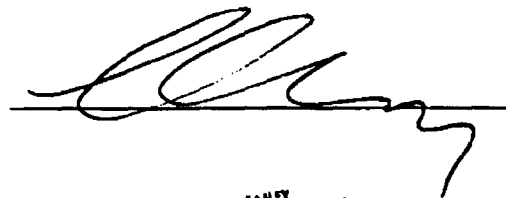
Concurring Arbitrator's Signature

  
Ann C. Northern, Esq.

Date of Decision: April 4, 1995

State of New York S.S.:  
County of New York

On this 24<sup>th</sup> day of March, 1995, before me personally appeared Ann C. Northern known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that she executed the same.



VALSHE L. BAILEY  
NOTARY PUBLIC, State of New York  
No. 24-4940363  
Qualified in Kings County  
Expiry Date: July 18, 1996