

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Scott L. Mathis

94-01249

Name of Respondent

Alex Brown & Sons Incorporated
Robert Oram

REPRESENTATION

For Claimant: M. David Hyman, Esq., Ho-Ho-Kus, New Jersey.

For Respondents: Nancy Palmer, Esq. of Alex Brown & Sons Incorporated, Baltimore, Maryland.

CASE INFORMATION

Statement of Claim filed: April 4, 1994.

Claimant's Submission Agreement signed on: March 14, 1994.

Joint Statement of Answer filed by Respondents Alex Brown & Sons Incorporated ("Alex Brown") and Robert Oram ("Oram") on: June 8, 1994.

Respondent Alex Brown's Submission Agreement signed on: June 2, 1994.

Respondent Oram's Submission Agreement signed on: June 2, 1994.

HEARING INFORMATION

Hearing Date / Sessions: April 3, 1994 / Two Sessions.

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

CASE SUMMARY

Claimant alleged that he entered into an employment contact with the Respondents and that Respondents subsequently breached the contract and as a result Respondents are liable to Claimant for damages. Claimant further alleged that on or about November 1, 1990 Respondent Oram, Managing Director of Respondent Alex Brown, contacted Claimant concerning possible employment with his firm. Claimant further alleged that at the time had just been offered and accepted a partnership interest with Oppenheimer. Claimant then alleged that the following week Oram telephoned Claimant and made an oral employment offer which Claimant accepted. Claimant alleged that Oram orally guaranteed Claimant \$40,000 per month for months 1 through 3, \$40,000 per month versus a payout of 50% of gross commissions whichever was greater for months 4 and 5 and 50% payout on gross commissions for months 6 through 15. Claimant next alleged that he requested that Oram reduce their oral agreement to writing. Claimant alleged that when he received the written employment agreement, he questioned a statement that made the terms of the agreement contingent upon Claimant's continued employment. Claimant alleged that Oram stated that the statement did not apply to the first 5 months of the agreement because the first 5 months were guaranteed and so Claimant signed the contract. Claimant alleged that he was terminated during the third month of his employment. Further, Claimant alleged that following his termination the Respondent refused to compensate Claimant pursuant to a contract provision which Claimant alleged guaranteed Claimant \$40,000 or 50% of gross commissions during the fourth and fifth months of his employment. Moreover, Claimant alleged that Respondent failed to pay him for his final week of employment.

Respondents maintained that in the fall of 1990 Claimant contacted an Investment Representative at Alex Brown about employment opportunities and that Claimant subsequently contacted Oram about employment. Respondents maintained that Claimant and Respondent entered into an at-will employment contract that was a product of negotiations between the parties. Respondents also maintained that Claimant was aware that any compensation owed pursuant to his job offer was contingent upon his continued employment with Alex Brown. Respondents further maintained that the contract provided that employment and compensation could be terminated with or without cause at any time. Respondents also maintained that Claimant was terminated for trading in his own account and thereby failing to comply with Respondent's work policies and procedures. Respondents further maintained that Claimant was warned repeatedly about his conduct and that the warnings went unheeded and that Claimant chose to resign rather than be terminated. Respondent further maintained that no compensation was owed to Claimant under the contract following the termination of Claimant's employment.

RELIEF REQUESTED

Claimant requested:

1. Actual damages in the sum of \$108,932.06.
2. Interest.
3. Costs of this arbitration and legal fees.

Respondents requested:

1. That Claimant's claims be dismissed.
2. All appropriate costs be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Oram filed a Motion to Dismiss Claimant's Claims against Oram and the Arbitration Panel granted Respondent Oram's Motion to Dismiss.

Claimant requested that the panel waive a postponement fee which had been assessed against Claimant. The Arbitration Panel denied Claimant's request for waiver of the postponement fee.

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. All Claims asserted by Claimant are denied.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

2 sessions X \$750 = \$1,500 minus hearing session deposit of \$750 = net \$750 due.

Forum fees Assessed Against:

1. Claimant is assessed the sum of \$750 which represents one-half of the total forum fees due, less the \$750 hearing session deposit paid by Claimant, leaving \$0 due.
2. Respondent, Alex Brown, is assessed the sum of \$750 which represents one-half of the total forum fees due. Respondent Alex Brown is liable and shall pay to the NASD the sum of \$750.

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

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NASD Award #94-Q1249

Concurring Arbitrators' Signatures

Name

Industry Chairperson

Barbara J. Glenns, Esq.

Name

Industry Panelist

Donald J. Rasweiler

Name

Industry Panelist


Berton Seltzberg

Date of Decision: April 27, 1995

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NASD Award #94-01249

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared **Barbara J. Glenns, Esq.** 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:

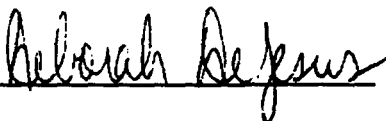
On this day of , 1995, before me personally appeared **Donald J. Rasweiler** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this 24 day of April , 1995, before me personally appeared **Berton Seltzberg** 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.



DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County
Commission Expires January 24, 1996

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NASD Award #94-Q1249

Concurring Arbitrators' Signatures

Name

Industry Chairperson

Barbara J. Glenns, Esq.

April 27, 1995

Barbara J. Glenns, Esq.

Name

Industry Panelist

Donald J. Rasweiler

Name

Industry Panelist

Berton Seltzberg

Date of Decision: April 27, 1995

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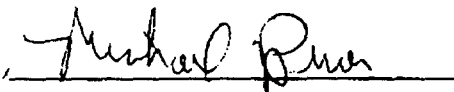
NASD Award #94-01249

STATE OF: *NEW YORK*

COUNTY OF: *NEW YORK*

SS:

On this *21* day of *MAY*, 1995, before me personally appeared **Barbara J. Glenns, Esq.** 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.



MICHAEL J. PRIOR
Notary Public, State of New York
No. 41-0009/58
Qualified in *Orange County*
Certificate filed in New York County
Commission Expires May 31, 1997.

STATE OF:

COUNTY OF:

SS:

On this day of , 1995, before me personally appeared **Donald J. Rasweiler** 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:

COUNTY OF:

SS:

On this day of , 1995, before me personally appeared **Berton Seltzberg** 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-Q1249

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NASD Award #94-Q1249

STATE OF:

SS:

COUNTY OF:

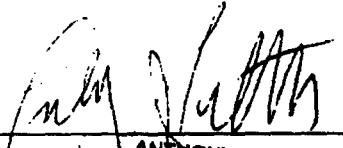
On this day of , 1995, before me personally appeared **Barbara J. Glenns, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this 17 day of April , 1995, before me personally appeared **Donald J. Rasweiler** 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.



ANTHONY J. SCILLETTI
Notary Public, State of New York
No. 4811272
Qualified in Nassau County
Term Expires July 31, 1996

~~ANTHONY J. SCILLETTI
Notary Public, State of New York
No. 4811272
Qualified in Nassau County
Term Expires July 31, 1996~~

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared **Berton Seltzberg** 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.
