

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Richard M. Scott

Case Number 95-00097

Name of Respondents

Alex Brown & Sons, Inc.
Marc Thomas Taylor

REPRESENTATION

For Claimant Richard M. Scott ("Claimant") appeared Mary Ann Stokes, Esq., Cohn, Lifland, Pearlman, Herrmann & Knopf, Saddle Brook, New Jersey.

For Respondents Alex Brown & Sons, Inc. ("Alex Brown") and Marc Thomas Taylor ("Taylor") (hereinafter collectively referred to as "respondents") appeared Daniel J. Donovan, Esq., counsel to Brown (Alex) & Sons, Inc., Baltimore, Maryland.

CASE INFORMATION

The Statement of Claim was filed on January 5, 1995. Claimant's Submission Agreement was signed on December 29, 1994.

Respondents' Joint Statement of Answer was received on April 11, 1995. Respondent's Alex Brown & Sons, Inc.'s Submission Agreement was signed on February 28, 1995 by Robert F. Price as Managing Director of Alex Brown & Sons, Inc. Respondent Taylor did not execute a Submission Agreement as required pursuant to Section 25(b) of the Code of Arbitration Procedure ("the Code").

HEARING INFORMATION

Hearing Dates/ Sessions:	December 4, 1995	-	Two Sessions
	December 5, 1995	-	Two Sessions

The hearings were held at the NASD offices located in New York City, New York.

Case Summary

Claimant alleged that in or about September of 1990, he received a "cold call" from Respondent Taylor who soliciting him to open an account and allegedly recommended that claimant purchase shares of Gensia Pharmaceutical, Inc. Claimant agreed to open an account with an initial purchase of 300 shares of Gensia at a total purchase price of \$1,876.50.

In November, 1991, claimant allegedly agreed to transfer the stock he had inherited from his mother worth approximately \$240,000.00 to his Alex Brown account. Claimant alleged that respondent Taylor was specifically advised that this was "sacred money" which claimant could not afford to lose.

Thereafter, from December 1991 through April 1992, respondent Taylor allegedly sold all the stocks transferred from claimant's inheritance, with the exception of one of the stocks; purchased 15,000 units of Metrovision of North America, Inc. at a total cost of \$73, 651; and purchased 2,000 shares of Diagnostic Products Corporation for a total purchase price of \$67,593. Claimant also alleged that the purchases of Metrovision and Diagnostic Products which represented 49.5% of the total funds he gave respondent Taylor to invest were unsuitable for claimant's investment goal of safety of principal, but also constituted an unacceptably high concentration of claimant's funds in these two high risk investments.

Respondents denied all allegations of wrongdoing as asserted by claimant in his statement of claim. Respondents maintained that at the time claimant opened his account he advised respondent Taylor that he was interested in purchasing securities in growth companies. Respondents further maintained that respondent Taylor recommended that claimant purchase shares of Gensia Pharmaceuticals, Inc. which claimant did and eventually sold on April 25, 1991 at a substantial profit. Further, such profits were reinvested in another growth opportunity which also proved to be profitable.

Respondents maintained that as the value of claimant's account increased, claimant expressed his pleasure with the performance of the account and advised Taylor he would deliver additional securities to the account. Accordingly, claimant allegedly deposited securities with an aggregate value of \$261,736.50 into the account. Respondents further maintained that Respondent Taylor recommended the sale of some, but not all, of the securities received into the account and made recommendations regarding the reinvestment of the proceeds of such sales; that at the time claimant transferred his account to another brokerage firm on January 8, 1993, claimant had realized net profits in the account in excess of \$15,000.00; and that the broker who serviced the account even after the account was transferred from respondent Alex Brown was respondent

Taylor.

In addition, Respondents maintained that each of the securities about which claimant complained were recommended on the basis of claimant's stated investment objective of purchasing securities issued by growth companies; that all purchases and sales in the account were made with claimant's express prior approval; and that any losses realized by claimant were the result of market risk which claimant knowingly and willingly undertook.

As affirmative defenses, respondents maintained that the claims asserted by claimant are barred by Section 8-319 of the Uniform Commercial Code; that the claim is barred due to the failure of claimant to mitigate his damages; that the actions complained of have been ratified by claimant; that the statement of claim fails to state a claim upon which relief can be granted; and that the statement of claim fails to state with the necessary specificity factual allegations sufficient to support a fraud claim. Further, respondents maintained that the claims are barred by the doctrines of estoppel and waiver; that claimant or his authorized agent, controlled the account at all times and authorized all transactions effected therein; that the statement of claim is vague and ambiguous; and that the claims asserted are barred by the statute of limitations.

RELIEF REQUESTED

Claimant requested an award against respondents as a result of his reliance upon the representations of Taylor and the expertise and reputation of Alex Brown causing claimant to purchase unsuitable securities and that through the failure of respondents to insure that his portfolio was diversified suffered substantial losses of \$98,818.00 as a result of the purchases of Metrovision and Diagnostic Products.

Respondent requested that the panel dismiss the claims asserted by claimant, in their entirety; award respondent Alex Brown its costs of defending this matter, including reasonable attorneys fees; and award whatever additional relief is just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, the parties agreed to accept the award in conformed counterpart copy while the originals remain on file with the NASD.

The arbitration panel made the following rulings as to Respondent Taylor who filed an answer in this arbitration, but failed to file and present a properly executed Submission of the dispute to NASD Arbitration (i.e. Submission Agreement):

1. Pursuant to Section 1 of the NASD Code of Arbitration Procedure ("the Code") the panel found subject matter jurisdiction over this entire controversy and specifically as it related to Taylor.
2. The panel found that Taylor was a person associated with an NASD member

namely, Alex Brown & Sons, Inc., at the time this controversy arose. Consequently the panel found personal jurisdiction over Taylor pursuant to Section 12 (a) of the Code. Additionally, Taylor executed a Form U-4 requiring him to arbitrate at this forum upon demand of the Customer Claimant.

3. In view of (2) above, Taylor was required to execute and file with the NASD a Submission Agreement pursuant to Section 25 (b) of the Code. In this regard, the panel found that the NASD properly served the claimant's claims upon Taylor pursuant to Section 25 (a) of the Code.

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. The arbitration panel has determined that the second two trades in Metrovision, specifically the January 2, 1992 trade and the April 24, 1992 trade, caused claimant's account to be overly concentrated and were therefore unsuitable recommendations. Respondents be and hereby are, jointly and severally, liable and shall pay to the claimant the sum of \$30,648.28 which represents the price paid for the two trades less the value of the stock from the date claimant transferred the account from Alex Brown on January 8, 1993.
2. The claimant is hereby ordered by the panel to transfer to Alex Brown & Sons, Inc. 10,000 shares of Metrovision stock.
3. Each party shall bear their respective costs, including attorneys fees, except that respondent Alex Brown & Sons, Inc. shall reimburse claimant the \$500.00 hearing session deposit previously deposited by the claimant with the NASD.

FORUM FEES

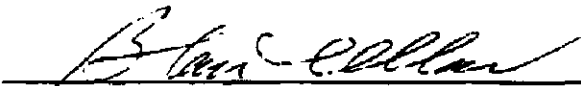
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

4 hearing sessions x \$500.00 = \$2,000.00 - \$500.00 hearing session deposit previously deposited by claimant = \$1,500.00.

Respondent Alex Brown & Sons, Inc. be and hereby is liable and shall pay to the NASD, Inc. the sum of \$1,500.00 representing forum fees which have been assessed by the arbitration panel.

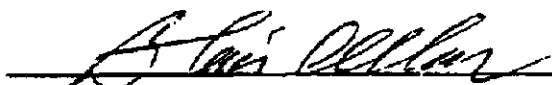
Concurring Arbitrators' Signatures:

Harvey Barrison, Esq.
Public Arbitrator - Chairperson


Blair Allen
Public Arbitrator

Mark R. Greenberg
Industry Arbitrator

I, Blair Allen, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.



Blair Allen

Date of Decision: February 8, 1996

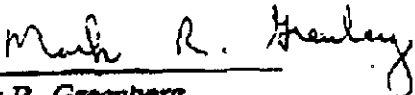
Concurring Arbitrators' Signatures:

Harvey Barrison, Esq.
Public Arbitrator - Chairperson

Blair Allen
Public Arbitrator


Mark R. Greenberg
Industry Arbitrator

Mark R. Greenberg do hereby affirm pursuant to Article 7507 of the Civil Procedure Law &
the rules of the Commission on the ... of the ...


Mark R. Greenberg

Date of Decision: February 8, 1996

Concurring Arbitrators' Signatures:

Harvey Barrison, Esq.
Public Arbitrator - Chairperson

Blair Allen
Public Arbitrator

Mark R. Greenberg
Industry Arbitrator

I, Harvey Barrison, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.



Harvey Barrison

Date of Decision: February 8, 1996