

NASD REGULATION AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Richard F. Cooper, Jr.

95-03724

Name of Respondents

Alex Brown & Sons Incorporated  
Mark Branigan

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**REPRESENTATION**

For Claimant Richard F. Cooper, Jr. ("claimant") appeared Jonathan Katz, Esq., of the law offices Jacobs, Grudberg, Belt & Dow, P.C. located in New Haven, Connecticut.

For Respondent Alex Brown & Sons, Inc., ("ABS") appeared Daniel Donovan, Esq., Compliance Director & Associate General Counsel for ABS.

For Respondent Mark Branigan ("Branigan") appeared Stephen L. Ratner, Esq., of the law offices Rosenman & Colin LLP located in New York, New York.

**CASE INFORMATION**

Statement of Claim was filed on: July 28, 1995.

Claimant's Submission Agreement was signed on: June 22, 1995.

Statement of Answer was filed by Respondent ABS on: September 21, 1995.

Respondent ABS' Submission Agreement was signed on: September 21, 1995.

Statement of Answer was filed by Respondent Branigan on: September 27, 1995.

Respondent Branigan's Submission Agreement was signed on: September 28, 1995.

**HEARING INFORMATION**

Hearing Dates/Sessions:	December 5, 1996	-	2 sessions
	December 6, 1996	-	2 sessions
	February 3, 1997	-	2 sessions
	February 4, 1997	-	2 sessions

The hearings were conducted at the offices of NASD Regulation, Inc., located in Boston, Massachusetts.

### CASE SUMMARY

Claimant contended that, in the summer of 1989, he received a cold call from Branigan while he was employed at Shearson Lehman and that Branigan convinced him to open an account. Claimant also maintained that, in July 1990, when Branigan became employed by ABS, he transferred his account to ABS. In addition, claimant alleged that he informed Branigan that he was not working, that he was financially responsible for three children, and that his investment objective was to generate income while preserving the capital that he had inherited.

Claimant alleged that, from July, 1990 through November, 1994, respondents invested his account in a variety of unsuitable and high risk securities and investment strategies. In addition, claimant alleged that respondents caused his account to borrow large sums on margin which was costly, increased the risk level in his account, contravened his investment objectives, and operated to increase the commissions generated in his account. In addition, claimant contended that because he lacked knowledge and experience and lacked access to information necessary to effectively monitor price changes in volatile securities, he relied heavily on his stockbroker to make appropriate investment decisions for him. In addition, claimant alleged that he relied upon ABS to monitor Branigan's performance for compliance with securities laws and regulations and ABS' internal compliance requirements, to insure that Branigan recommended only suitable investments, and to insure that Branigan did not churn his account.

ABS alleged that, in 1989, claimant informed Branigan that he was interested in aggressively trading securities with the objective of making short term gains and that he had a substantial net worth. ABS also maintained that, at the time claimant opened his account at ABS, he told Branigan that his investment objectives included capital appreciation and speculation. Moreover, ABS denied that claimant ever informed either ABS or Branigan that he was an unsophisticated and unemployed blue collar worker, with psychological problems, whose net worth consisted almost exclusively of that which he inherited, or that his investment objective was to preserve his capital to enable him to support dependent children. In addition, ABS alleged that the option agreement signed by claimant included representations that: 1) he had 15 years experience investing in stocks and bonds and 7 years experience investing in options; 2) he had a liquid net worth in excess of \$500,000.00 and a total net worth in excess of \$1,000,000.00; and that 3) his investment objectives included capital appreciation and speculation. ABS maintained that, after his account was opened, claimant and Branigan had frequent contact, that all investment decisions regarding claimant's account were made by claimant, and that claimant maintained control over his account at all times.

Branigan maintained that, in 1989, claimant informed him that he was a self-employed real estate investor and developer, with a net worth in excess of two million dollars, who maintained accounts at other brokerage firms, and who was interested in aggressively trading securities through the use of margin in order to make short term profits. Branigan also contended that, when claimant transferred his account to ABS, he reaffirmed claimant's financial status and claimant's investment objectives of speculation and increasing capital. Branigan further alleged

that claimant informed him that he was experienced in using margin and that he intended to use margin in connection with his trading. In addition, Branigan maintained that he discussed in advance all trades with claimant, obtained claimant's authorization for each and every transaction prior to execution, and that claimant exercised complete control over his own account.

### **RELIEF REQUESTED**

Claimant requested:

1. Compensation for his out of pocket losses aggregating \$268,656.00 on transactions initiated at ABS.
2. In the alternative, return of all margin interest and commissions paid in the total amount of \$317,358.00, on the theory that ABS should disgorge wrongful gains made at the expense of claimant.
3. Compensation for the loss of gain and income he would have earned had his account been managed in a lawful manner between approximately January, 1988 and the present, which damages are estimated to be \$151,122.00 as of November, 1994.
4. Exemplary and punitive damages for one or more of the following: common law fraud; violations of Section 10b-5; breach of fiduciary duty; violations of the Connecticut Uniform Securities Act; and willful breach of contract.
5. Damages for emotional distress.
6. Attorney's fees.
7. Expert witness fees.
8. Forum fees.
9. Such other and further relief as the arbitration panel sees fit to award.

ABS requested that the claims asserted by claimant be dismissed in their entirety and that the administrative cost of this proceeding be charged to claimant.

Branigan requested that the Statement of Claim be dismissed in its entirety and that he be awarded the costs and expenses of this arbitration.

### **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.

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At the conclusion of claimant's case, respondent Branigan made a motion to dismiss which was joined in by respondent ABS. After deliberation, the panel of presiding arbitrators determined to grant respondents' joint motion to dismiss.

### 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 against respondents are hereby dismissed in their entirety.
2. Claimant's request for exemplary and punitive damages is hereby denied.
3. Claimant's request for attorney's fees, expert witness fees and forum fees is hereby denied.
4. All other requests are hereby denied.

### FORUM FEES

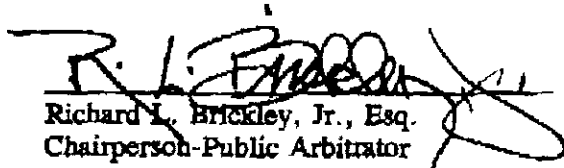
Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation shall retain the non-refundable filing fee and have assessed the following forum fees:

8 hearing sessions x \$1000.00	=	\$8,000.00
- <u>hearing session deposit</u>	=	<u>\$1,000.00</u>
Total Outstanding	=	\$7,000.00

Respondents be and hereby are jointly and severally liable for \$7,000.00, representing the total amount of outstanding forum fees.

Fees are payable to the NASD Regulation, Inc.

Concurring Arbitrators' Signatures

  
Richard L. Brickley, Jr., Esq.  
Chairperson-Public Arbitrator

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Richard V. Cookson  
Public Arbitrator

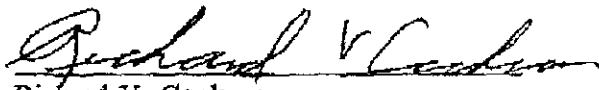
Dissenting Arbitrator's Signature

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Douglas C. Evans  
Industry Arbitrator

Date of Decision: June 5, 1997

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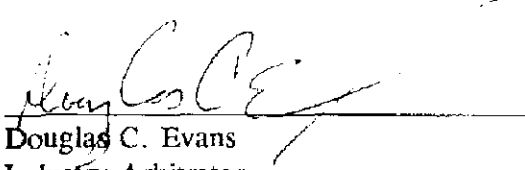
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Douglas C. Evans  
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