

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

---

In the Matter of the Arbitration Between

Name of Claimants

W. Lawson and Jean M. Cording

96-00100

Name of Respondents

Alex Brown & Sons Incorporated  
Mark B. Fisher

---

**REPRESENTATION**

Claimants W. Lawson and Jean M. Cording ("Claimants") were represented by Alexander R. McMullen, Esq. and Richard W. Drury, Esq., McMullen & Drury, Towson, MD.

Respondents Alex Brown & Sons, Inc. ("Alex Brown") and Mark B. Fisher ("Fisher") were represented by Robert E. Patterson, Assistant General Counsel, Alex Brown & Sons, Inc., Baltimore, MD.

**CASE INFORMATION**

The Statement of Claim was filed January 10, 1996.

Claimants' Uniform Submission Agreement was signed December 18, 1995.

The Joint Statement of Answer of Alex Brown and Fisher (collectively "Respondents") was filed April 1, 1996.

Alex Brown's Uniform Submission Agreement was signed April 1, 1996.

**HEARING INFORMATION**

Prehearing Date/Sessions: October 11, 1996/one session

Hearing Dates/Sessions: October 23, 1996/two sessions  
October 24, 1996/two sessions

Hearing Location: Clarion Hotel  
Baltimore, MD

**CASE SUMMARY**

Claimants alleged, among other things, that Respondents induced Claimants to purchase unsuitable securities on margin and to authorize excessive trading in Claimants' account. Claimants alleged that they first received a telephone call from Fisher sometime in 1985 when Fisher was employed by Shearson Lehman Brothers ("Shearson"). Claimants alleged that they were unsophisticated investors with no training or background in securities nor had they done any previous investing. Claimants alleged

they reasonably relied upon Fisher's knowledge and expertise in managing their investment portfolio. Claimants alleged that Fisher had been informed that Claimants' investment goals were a balance of growth and income. Claimants alleged that when Fisher moved from Shearson to Alex Brown in 1990, Claimants transferred their personal and retirement accounts to Alex Brown at Fisher's request. Claimants alleged that when Mr. Cording retired from full time employment in 1987, Claimants informed Fisher of that fact. Claimants alleged that when Fisher next recommended securities purchases, Claimants informed Fisher that they did not have the cash to make the purchases. Claimants alleged that Fisher recommended that Claimants purchase securities on margin. Claimants alleged that greater than eighty-five percent of equity purchases made by Claimants while Claimants had their account at Alex Brown were made on margin. Claimants alleged that for Respondents to entice and encourage Claimants, retirees both over the age of sixty and on fixed incomes, to maintain margin balances of nearly \$350,000.00 with ratios in excess of eighty-three percent (83%) was highly unsuitable. Claimants alleged that as a result of relying on Respondents' inducements to trade on margin, Claimants have wrongfully paid approximately \$60,000.00 in margin interest and have a margin account in excess of \$86,000.00. Claimants alleged that Respondents knew that Claimants were not sophisticated investors and would follow Respondents' recommendations. Claimants alleged that to induce investors of Claimants' age and income to trade heavily on margin violates Article III, Section 2 and Article III, Section 30 and Amendment A of the NASD Rules of Fair Practice. Claimants alleged that Respondents failed to recommend securities which would diversify Claimants' portfolio. Claimants alleged that the securities which Claimants were persuaded to authorize were high risk and most were securities in which Alex Brown was a market maker. Claimants alleged that Respondents' control of Claimants' account was engineered to serve Respondents' interests over those of Claimants. Claimants alleged that one example was when Fisher induced Claimants to purchase \$334,646.28 of Gensia Pharmaceutical, Inc. ("Gensia") and Gensia puts over an eighteen month period. Claimants alleged that Respondents indicated that Gensia was undervalued and would rapidly increase in value upon receipt of FDA approval of a pharmaceutical produced by Gensia. Claimants alleged that Respondents failed to inform them of the high risk involved. Claimants alleged that Respondents also induced them to purchase UTS Aramed, Inc., a call of Gensia. Claimants alleged that Alex Brown was also a market maker in UTS Aramed Inc. Claimants alleged that Respondents exercised control over the volume and frequency of trading in Claimants account and that the excessive trading was done to benefit Respondents and not Claimants. Claimants alleged that the actions of Respondents breached Respondents' fiduciary duty to Claimants. Claimants maintained that Alex Brown failed to properly supervise Fisher in the fraudulent management of Claimants' account.

Respondents denied all claims made against them as alleged in the Statement of Claim. Respondents agreed that Claimants did open an account with Fisher while Fisher was at Shearson, but in fact, it was in July 1984. Respondents agreed that Claimants transferred their accounts to Alex Brown when Fisher joined the New York office of Alex Brown. Respondents maintained that Mr. Cording specifically stated to Respondents that Fisher did not do anything "dishonest" but that Claimants wanted Alex Brown to compensate Claimants for advice that turned out badly. Respondents maintained that while Claimants have three accounts with Alex Brown, Claimants limit their complaints to the joint account. Respondents maintained that Claimants' joint account was a margin account at Shearson and was opened as a margin account at Alex Brown. Respondents maintained that when the account was transferred to Alex Brown in July 1990, the account had approximately \$1,277.00 in cash and \$284,684.00 in securities, with a margin balance of approximately \$75,941.00. Respondents maintained that the only other deposit of cash or securities to the account occurred when Claimants deposited approximately \$79,063.00 in additional securities into the account in April, 1993. Respondents maintained that Claimants withdrew approximately \$83,000.00 in cash from the account between January 1992 and November 1995. Respondents maintained that during the period from August 1990 through February 1992, Claimants account grew to a net value of over \$390,000.00. Respondents maintained that Claimants had a margin

account at Shearson and continued with a margin account at Alex Brown. Respondents maintained that Claimants received clear concise monthly statements of their accounts and never complained about the use of the margin in their account. Respondents further maintained that Claimants controlled their accounts at all times and could have, had they wished, reduced or eliminated entirely, that margin balance at any time. Respondents maintained that the recommendations were suitable for Claimants and consistent with Claimants' investment objectives. Respondents maintained that Claimants were fully aware of the risks associated with each investment and, where appropriate, those risks were hedged. Respondents maintained that while it is true that Claimants purchased Gensia, they also sold it during the same time period and realized over \$90,000.00 in profits on their Gensia trades. Respondents maintained that Claimants are experienced, knowledgeable investors who fully understood the transactions in their accounts and controlled and authorized all activity in those accounts. Respondents maintained that Claimants made an informed decision to use the margin in their account and willingly accepted its benefits. Respondents maintained that Respondents acted properly at all times, and that any losses suffered by Claimants were due to market forces and as a result of Claimants' own decisions.

#### **RELIEF REQUESTED**

Claimants requested relief in the amount of \$187,410.00 in lost portfolio value; \$59,712.00 in margin interest wrongfully paid; \$64,326.00 in commissions; \$23,853.00 in lost dividends; \$372,214.00 in punitive damages; pre-award interest; the costs of this arbitration, and reasonable attorney's fees.

Respondents requested that the Statement of Claim be dismissed in its entirety, and that Claimants be assessed the costs 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.

Respondent Fisher submitted a Uniform Submission Agreement to the NASD Regulation which was not properly executed. However, pursuant to Rule 10301, Fisher is required to submit to arbitration and thus is bound by the rulings of the panel.

#### **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. That the Statement of Claim is dismissed.
2. That the request for punitive damages is denied.
3. That each party is to pay its own costs and expenses including attorney's fees.
4. That any relief not specifically addressed herein is denied.

**FORUM FEES**

Pursuant to Rule 10332(c) (formerly Section 43) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 prehearing sessions x \$300.00 = \$300.00

4 hearing sessions x \$1,000.00 = \$4,000.00

Total Forum Fees = \$4,300.00

Forum Fees are assessed to Claimants. Claimants are to receive credit for the \$1,000.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due of \$3,300.00.

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

**DATE**

**CONCURRING ARBITRATORS' SIGNATURES**

11/4/96

Bruce Sanders

Bruce Sanders, Chairperson  
Public Arbitrator

\_\_\_\_\_

William H. Malloy, Jr.  
Public Arbitrator

\_\_\_\_\_

Joseph E. Godridge, Jr.  
Industry Arbitrator

Date Decision Served by NASD Regulation: November 7, 1996

**FORUM FEES**

Pursuant to Rule 10332(c) (formerly Section 43) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 prehearing sessions x \$300.00 = \$300.00

4 hearing sessions x \$1,000.00 = \$4,000.00

Total Forum Fees = \$4,300.00

Forum Fees are assessed to Claimants. Claimants are to receive credit for the \$1,000.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due of \$3,300.00.

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

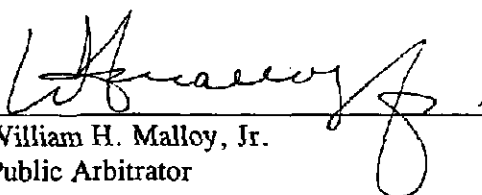
**DATE**

**CONCURRING ARBITRATORS' SIGNATURES**

\_\_\_\_\_

\_\_\_\_\_  
Bruce Sanders, Chairperson  
Public Arbitrator

Nov. 1, 1996

  
\_\_\_\_\_  
William H. Malloy, Jr.  
Public Arbitrator

\_\_\_\_\_

\_\_\_\_\_  
Joseph E. Godridge, Jr.  
Industry Arbitrator

Date Decision Served by NASD Regulation: November 1, 1996

**FORUM FEES**

Pursuant to Rule 10332(c) (formerly Section 43) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 prehearing sessions x \$300.00 = \$300.00

4 hearing sessions x \$1,000.00 = \$4,000.00

Total Forum Fees = \$4,300.00

Forum Fees are assessed to Claimants. Claimants are to receive credit for the \$1,000.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due of \$3,300.00.

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

**DATE**

**CONCURRING ARBITRATORS' SIGNATURES**

\_\_\_\_\_  
Bruce Sanders, Chairperson  
Public Arbitrator

\_\_\_\_\_  
William H. Malloy, Jr.  
Public Arbitrator

11/1/96

Joseph E. Godridge, Jr.  
Joseph E. Godridge, Jr.  
Industry Arbitrator

Date Decision Served by NASD Regulation: November 1, 1996