

## AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Carol Monahan

vs.

#96-05424

Name of Respondents

James J. Lennon  
Alex Brown & Sons, Inc.

REPRESENTATION OF PARTIES

Claimant Carol Monahan ("Claimant") was represented by Steven H. Berkowitz, Esq., Moore & Berkowitz, Southampton, PA.

Respondents Alex Brown & Sons, Inc. ("Alex Brown") and James J. Lennon ("Lennon") were represented by Robert E. Patterson, Esq. and Sheila Vidmar, Esq., Alex Brown & Sons, Inc., Baltimore, MD.

CASE INFORMATION

The Statement of Claim was filed December 6, 1996.

Claimant's Amended Statement of Claim was filed January 9, 1997.

Claimant's Second Amended Statement of Claim was filed November 25, 1997.

Claimant's Uniform Submission Agreement was signed December 12, 1996.

The Joint Statement of Answer was filed by Respondents Alex Brown and Lennon (collectively "Respondents") on or about January 9, 1997.

The Statement of Answer to the Amended Statement of Claim was filed March 20, 1997.

The Statement of Answer to the Second Amended Statement of Claim was filed November 5, 1997.

Alex Brown's Submission Agreement was signed on March 5, 1997.

Lennon's Submission Agreement was signed on March 4, 1997.

HEARING INFORMATION

Hearing dates/Sessions:      December 12, 1997/one session  
                                         August 11, 1998/two sessions  
                                         August 12, 1998/two sessions

Hearing Location:              NASD Regulation District 9 Office  
                                         Philadelphia, PA

CASE SUMMARY

Claimant alleged that Respondents engaged in activities which constituted common law fraud, fraudulent concealment, fraud in the inducement, breach of fiduciary duty, breach of contract, violation of the

Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 PA Cons. Stat. Sec. 201-1 et seq., violation of Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, and violations of the NASD and exchange rules governing suitability, supervision, and "Know Your Customer" provisions. Specifically Claimant alleged that she was widowed at the age of forty when her husband committed suicide in the family home, and left her with two teenage children to raise alone. Claimant contended that she was terribly distraught at her husband's death and unable to make crucial decisions concerning his life insurance proceeds. At her mother's suggestion, Claimant alleged that she met with Lennon, associated with Alex Brown. Claimant further alleged that her first instinct was to pay off her mortgage in order to gain complete equity in her home and eliminate the burden of her monthly mortgage payments, and then safely invest the remaining insurance money. However, Claimant asserted that Lennon convinced her, when she had never invested in securities, to invest the life insurance proceeds of \$245,000.00 with Alex Brown and take monthly withdrawals from the account to meet her mortgage and tax payments. Claimant alleged that Lennon assured her that her account would be income producing while preserving principal, thus satisfying her two major concerns and needs.

Claimant alleged that Lennon then engaged in a continuous course of fraudulent conduct, to Claimant's great detriment, including but not limited to, the purchases of unsuitable and often high risk securities, unauthorized trading, excessive buying and selling of securities to generate commissions, and handling the account as an illegal *de facto* discretionary account. Claimant also alleged that the NASD sent a Letter of Caution to Lennon for "failure to obtain specific authorization for each trade in the absence of prior written authorization" constituting a violation of NASD Rule 2510. Claimant contended that Lennon concealed the true state of the account by continually reassuring Claimant of its good condition even when he knew it was suffering losses and not producing sufficient income to meet her long-term income needs and principal-preserving goals. In addition, Claimant alleged that Alex Brown failed to provide any supervision of Lennon's activities as required with a discretionary account, failed to "know" Claimant or her investment needs and never alerted her to the unsuitability and high risk nature of many of the securities which Lennon purchased for her account. Claimant claimed that Alex Brown never employed any of the required procedural safeguards to prevent the unauthorized investments and excessive trading in her account contributing to her considerable loss of profits and principal. Furthermore, Claimant alleged that had Alex Brown properly advised her as to the fraudulent nature of Lennon's transactions, instead of actively concealing the true state of the account, Claimant would not have accompanied Lennon to another firm and would have been able to avoid the significant consequential losses incurred thereafter.

Respondents denied the allegations set forth in the Statements of Claim. Respondents specifically stated that Claimant opened her account in February 1988 and transferred it to another firm in order to maintain her relationship with Lennon, when he voluntarily resigned on September 12, 1991. Respondents further maintained that despite receiving accurate monthly account statements, confirmations of trades and prospectuses, at no time during the approximately three and one-half years she had her account with Alex Brown, did Claimant ever make any complaint about the manner in which Lennon or Alex Brown was handling her account. At the time Claimant transferred her account to another broker dealer, Respondents maintained that she had made a profit in excess of \$60,000.00. Respondents contended that in December 1996, more than eight and one-half years after she opened her account and more than five years after she ceased doing business with Alex Brown, Claimant claimed for the first time that her account had been mishandled from its inception and that she had not authorized any of the trades in it.

Respondents requested that the case be dismissed for several reasons. First, Respondents maintained that most if not all of the claims are not eligible for submission to arbitration pursuant to NASD Code of Arbitration Procedure (the "Code") Rule 10304, which bars the bringing of claims based on events

occurring more than six years prior to the commencement of the action. Second, Respondents maintained that all of the claims are barred by the applicable statutes of limitations. Thirdly, Respondents further maintained that the claims are barred pursuant to the doctrines of waiver, estoppel and ratification. Fourth, Respondents asserted that the claims are factually baseless in that the account was profitable, generated significant income, was well diversified and the recommendations made were reasonable in light of Claimant's investment objectives. Respondents also maintained that Claimant was provided with accurate monthly account statements, confirmations of all trades and prospectuses which detailed the investments in, and performance of, her account.

#### RELIEF REQUESTED

Claimant requested an award for the direct losses suffered while her account remained at Alex Brown, consequential damages suffered when her account was transferred with Lennon to another broker dealer, lost opportunity damages estimated on what her account would be worth if properly invested, treble damages under the Pennsylvania Unfair Trade Practices and Consumer Protection Law and reasonable attorney's fees and costs.

Respondents requested that the claims asserted against them be denied in their entirety, that all references to this arbitration be expunged from Lennon's Central Registration Depository ("CRD") records with the NASD, and that all costs associated with this arbitration be assessed to Claimant.

#### OTHER ISSUES CONSIDERED & DECIDED

The panel considered Respondents' Motions to Dismiss and Claimant's Responses thereto and denied the Motion before and during the hearing.

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 Regulation, Inc. Office of Dispute Resolution (the "NASD").

#### AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent Alex Brown shall rescind Claimant's March 1988 purchase of 2,000 units of Brown Benchmark Limited Partnership at \$25.00 per unit; and
2. That the claim for treble damages is denied; and
3. That each party shall bear its own costs and expenses, including attorney's fees, with the exception of forum fees as specified below; and
4. That any and all relief not specifically addressed herein is denied.

OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondent Alex Brown is assessed a member surcharge of \$350.00, which has been paid.

FORUM FEES

Pursuant to Rule 10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, the following forum fees are assessed:

5 Hearing sessions x \$ 750.00 = \$3,750.00

Forum Fees are assessed to Claimant at \$1,875.00 and to Respondents, jointly and severally, at \$1,875.00. Claimant shall receive credit for the \$750.00 hearing session deposit previously submitted to the NASD, leaving a net assessment for Claimant of \$1,125.00.

Respondents Alex Brown and James Lennon have a net forum fees assessment due of \$1,875.00.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

DATE

9/21/98

CONCURRING ARBITRATORS' SIGNATURES

Joseph R. Lally  
Joseph R. Lally, Presiding Chair  
Public Arbitrator

George A. Spohrer  
George A. Spohrer  
Public Arbitrator

Michael J. Mazzafrro  
Michael J. Mazzafrro  
Industry Arbitrator

Date Decision was Served by NASD: Sept. 29, 1998

OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondent Alex Brown is assessed a member surcharge of \$350.00, which has been paid.

FORUM FEES

Pursuant to Rule 10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, the following forum fees are assessed:

5 Hearing sessions x \$ 750.00 = \$3,750.00

Forum Fees are assessed to Claimant at \$1,875.00 and to Respondents, jointly and severally, at \$1,875.00. Claimant shall receive credit for the \$750.00 hearing session deposit previously submitted to the NASD, leaving a net assessment for Claimant of \$1,125.00.

Respondents Alex Brown and James Lennon have a net forum fees assessment due of \$1,875.00.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

DATE

CONCURRING ARBITRATORS' SIGNATURES

\_\_\_\_\_

\_\_\_\_\_  
Joseph R. Lally, Presiding Chair  
Public Arbitrator

Sept 16, 1998

George A. Spahr  
George A. Spahr  
Public Arbitrator

\_\_\_\_\_

\_\_\_\_\_  
Michael J. Mazzafrò  
Industry Arbitrator

Date Decision was Served by NASD:

Sept. 29, 1998

OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondent Alex Brown is assessed a member surcharge of \$350.00, which has been paid.

FORUM FEES

Pursuant to Rule 10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, the following forum fees are assessed:

5 Hearing sessions x \$ 750.00 = \$3,750.00

Forum Fees are assessed to Claimant at \$1,875.00 and to Respondents, jointly and severally, at \$1,875.00. Claimant shall receive credit for the \$750.00 hearing session deposit previously submitted to the NASD, leaving a net assessment for Claimant of \$1,125.00.

Respondents Alex Brown and James Lennon have a net forum fees assessment due of \$1,875.00.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

DATE

CONCURRING ARBITRATORS' SIGNATURES

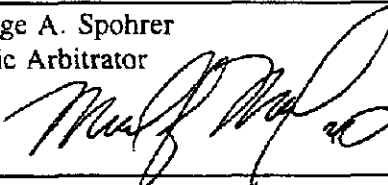
\_\_\_\_\_

\_\_\_\_\_  
Joseph R. Lally, Presiding Chair  
Public Arbitrator

\_\_\_\_\_

\_\_\_\_\_  
George A. Spohrer  
Public Arbitrator

9/17/98

\_\_\_\_\_  
  
\_\_\_\_\_  
Michael J. Mazzafro  
Industry Arbitrator

Date Decision was Served by NASD: Sept. 29, 1998