

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Ruben Kornfeld

vs.

Case No.  
96-05773

Names of Respondents

Alex Brown & Sons, Inc.  
Mark Branigan

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**REPRESENTATION**

For Claimant Ruben Kornfeld ("Claimant") appeared Kevin P. Conway, Esq. of the law offices of Conway & Conway, located in New York, New York.

For Respondent Alex Brown & Sons, Inc ("Alex Brown") appeared Daniel J. Donovan, Esq. Compliance Director and Associate General Counsel for Alex Brown, located in Baltimore, Maryland..

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**

Claimant's Statement of Claim was filed on December 26, 1996.  
Claimant's Submission Agreement was signed on December 19, 1996.

Alex Brown's Statement of Answer was filed on April 28, 1997.  
Alex Brown's Submission Agreement was signed on January 29, 1997.

Branigan's Statement of Answer was filed on April 21, 1997.  
Branigan's Submission Agreement was signed on April 18, 1997.

**HEARING INFORMATION**

Pre-Hearing Conferences:	August 11, 1997	-	1 session
	September 22, 1997	-	1 session
Hearing Dates/Sessions:	December 10, 1998	-	2 sessions
	December 11, 1998	-	1 session

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

### CASE SUMMARY

Claimant alleged that, in 1992, Branigan aggressively solicited him to open an account at Alex Brown and, as an inducement, Branigan represented to him that he had information unknown to others concerning Genesis Pharmaceutical, Inc. ("Genesis") which would guarantee that the investment in Genesis would triple in value within the very near future. Claimant contended that he indicated to Branigan that he was not a sophisticated investor, did not have any significant previous investment experience and, needed to maintain his savings in safe and conservative investment vehicles. Claimant also alleged that, on February 12, 1992, Branigan convinced him to invest \$47,000 in Genesis and, unknown to him, Branigan opened a customer margin account instead of a normal customer account. Claimant further alleged that, unknown to him, Branigan purchased 2,000 units of Aramed, Inc., for a total of \$93,251.50, with each unit consisting of one callable common share and one warrant of Genesis. Claimant maintained that, almost immediately, the stock began to decline and, on February 26, 1992, Branigan contacted him and directed him to send an additional \$13,628.00 to maintain his position. Claimant alleged that, in reality, this request for additional funds was nothing more than a call to meet the deficit in the account as a result of a liquidation of 1000 units. Claimant contended that, in December, 1992, Branigan liquidated his account without his knowledge or consent and, after deductions for margin interest and market losses, his account suffered an approximate loss of \$32,000.00.

Alex Brown maintained that Claimant was referred to Branigan through his cousin. Alex Brown contended that, at the time Claimant opened his account, Claimant represented to Branigan that he was an experienced investor and that his investment objective was aggressive growth. Alex Brown also contended that Claimant's initial investment was purchased on margin, in accordance with the terms of a Margin Agreement entered into between Claimant and Alex Brown. Alex Brown maintained that each of the transactions effected in Claimant's account was authorized in advance by Claimant and was consistent with Claimant's stated investment objectives. In addition, Alex Brown maintained that Claimant did not state any objection to the transactions in his account when they were made in 1992.

Branigan maintained that Claimant sought out Branigan for the express purpose of opening an account and investing in Genesis. Branigan contended that Claimant's investment objective was aggressive growth and that Claimant represented that he had previously traded on margin and owned other securities accounts. Branigan denied that he ever represented to Claimant that he was in possession of information unknown to others which would guarantee that the investment would triple in value. Branigan maintained that he and Claimant discussed every trade in advance and that no trade was done without Claimant's approval and authorization.

### **RELIEF REQUESTED**

Claimant requested rescission of the unauthorized transactions together with compensatory damages in excess of \$100,000.00. Claimant requested damages for the intentional infliction of emotional distress, pre-judgment and post-judgment interest on the compensatory damages, treble damages, costs of this action, including costs and expenses of expert witnesses, reasonable attorneys' fees, and punitive damages.

Alex Brown requested that Claimant's Statement of Claim be dismissed in its entirety, and that Claimant be charged with the administrative costs of this proceeding.

Branigan requested that Claimant's Statement of Claim be dismissed in its entirety, and that he be awarded costs and expenses of this action.

### **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 NASD Regulation, Inc.

### **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. Alex Brown and Branigan be and hereby are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of **THIRTEEN THOUSAND, SIX HUNDRED TWENTY-EIGHT DOLLARS (\$13,628.00)**;
2. Claimant's requests for treble damages, costs and attorneys' fees are hereby denied;
2. All other requests are hereby denied.

### **OTHER COSTS**

Pursuant to Rule 10333 of the Code of Arbitration Procedure ("Code"), Alex Brown has paid to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

### **FORUM FEES**

Pursuant to Rule 10332(c) of the Code, the arbitrators have determined that NASD Regulation, Inc. will retain the \$200.00 non-refundable filing fee submitted by Claimant and have assessed the following forum fees:

1 Pre-Hearing conference x \$300.00	-	\$ 300.00
1 Pre-Hearing conference (with full panel)	-	\$ 750.00
3 Hearing sessions x \$750.00	-	\$2,250.00

1. Claimant be and hereby is liable for the sum of \$1,100.00, representing one-third of the total amount of forum fees assessed. Claimant previously deposited \$750.00 with NASD Regulation, Inc. and, therefore, shall pay the balance of \$350.00 to NASD Regulation, Inc.
2. Alex Brown be and hereby is liable for and shall pay to NASD Regulation, Inc. the sum of \$1,100.00, representing one-third of the total amount of forum fees assessed.
3. Branigan be and hereby is liable for and shall pay to NASD Regulation, Inc. the sum of \$1,100.00, representing one-third of the total amount of forum fees assessed.

**ARBITRATION PANEL**

Robert D. Herschman, Esq. -	Public Chairperson
Russell Stine Heckler, Esq. -	Public Arbitrator
David W. Haynes -	Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**

*Robert Herschman*

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Robert D. Herschman, Esq.

Date of decision: January 20, 1999

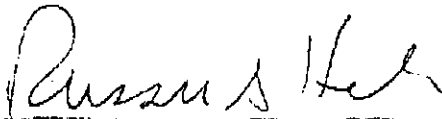
I, **Robert D. Herschman, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

*Robert Herschman*  
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Robert D. Herschman, Esq.

**ARBITRATION PANEL**

Robert D. Herschman, Esq.	Public Chairperson
Russell Stine Heckler, Esq.	Public Arbitrator
David W. Haynes	Industry Arbitrator

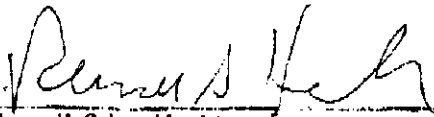
**CONCURRING ARBITRATOR'S SIGNATURE**



Russell Stine Heckler, Esq.

Date of decision: January 20, 1999

I, Russell Stine Heckler, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

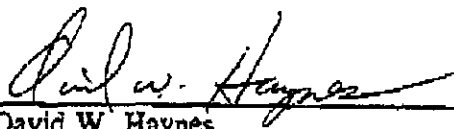


Russell Stine Heckler, Esq.

**ARBITRATION PANEL**

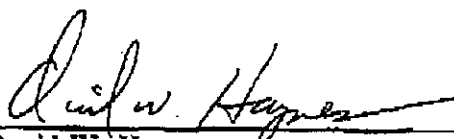
Robert D. Herschman, Esq. -	Public Chairperson
Russell Stine Heckler, Esq. -	Public Arbitrator
David W. Haynes -	Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**

  
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David W. Haynes

Date of decision: January 20, 1999

I, David W. Haynes, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
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David W. Haynes