

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

Roberto Engstrom, (Claimant) vs. Sutro & Co. Incorporated, and Matthew Aragon Brown, (Respondents).

Case Number: 99-00371

Hearing Site: San Francisco, California.

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**REPRESENTATION OF PARTIES**

Roberto Engstrom hereinafter referred to as "Claimant": Brett A. Alcala, Esq., Birnbaum, Umeda & Alcala, Redwood City, California.

Sutro & Co. Incorporated, and Matthew Aragon Brown hereinafter collectively referred to as "Respondents": Gilbert R. Serota, Esq., Howard Rice Nemerovski Canady & Falk, San Francisco, California.

**CASE INFORMATION**

Statement of Claim filed on or about: January 26, 1999.

Brett Alcala executed the Uniform Submission Agreement for Roberto Engstrom Under Special Power of Attorney on: January 26, 1999.

The Joint Statement of Answer was filed on or about: April 5, 1999.

**CASE SUMMARY**

Claimant alleges that Respondents Sutro & Company, Inc., acting through its registered representative Respondent Matthew Aragon Brown, induced Claimant to purchase securities by making baseless and improper price predictions and claims of "inside information," which were made without an adequate, accurate, or reasonable basis in fact. Claimant further alleges that Respondent Brown induced Claimant to make numerous short term trades which were excessive and unreasonable in light of Claimant's financial goals and objectives. As against Respondent Sutro & Company, Inc., Claimant alleges that Respondent failed to supervise and establish adequate supervisory measures over Respondent Brown who had a history of customer complaints.

Claimant alleges the following causes of action: breach of fiduciary duty; churning; failure to supervise; breach of implied covenant of good faith and fair dealing; misrepresentation; and violation of state securities laws; and Respondents' breach of the customer agreement contract by failing to observe the NASD Rules of Fair Practice and the NYSE rules. Claimant

requests recovery of out of pocket losses in the amount of \$150,885.35, plus attorney's fees, costs, interest, lost profits and punitive damages.

Respondents deny all of Claimant's allegations and assert that Claimant was an experienced and sophisticated investor that desired active trading. Respondents also assert the affirmative defenses of estoppel, waiver, ratification, assumption of risk, statutes of limitation, unclean hands, lack of causation, and failure to state a claim upon which relief may be granted. Respondents request that all claims be dismissed and that all costs be assessed against Claimant.

### **RELIEF REQUESTED**

**Claimants requested:**

Out of Pocket Losses	\$150,885.35
Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Lost Profits	Unspecified

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents Sutro & Company and Matthew Brown did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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.

### **FINDINGS**

The Panel determined that based upon the evidence, testimony and other supporting documentation Claimant failed to sustain his burden of proof with respect to the causes of action as set forth in the claim.

### **AWARD**

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

1. Each and every claim asserted in the Statement of Claim is dismissed.

2. Each side to bear their own costs and expenses, including attorneys' fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:  
Initial claim filing fee = \$750

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter Sutro & Co., Inc., the member firm, is a party.

Member surcharge	= \$1,500
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$2,500

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session(s) with Panel x \$750	= \$ 750
Pre-hearing conference(s): July 27, 1999	1 session

Ten (10) Hearing sessions x \$750	= \$7,500
Hearing Date(s):	November 29, 1999 2 sessions;
	November 30, 1999 2 sessions;
	December 1, 1999 2 sessions;
	February 3, 2000 2 sessions;
	February 4, 2000 2 sessions.

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Total Forum Fees	= \$8,250
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1. The Panel has assessed \$4,125 of the forum fees to the Claimant.
2. The Panel has assessed \$4,125 of the forum fees jointly and severally to the Respondents.

#### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided

without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Claimant requested one prior award: = \$5.00

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 200
Forum Fees	= \$4,125
<u>Administrative Costs</u>	<u>= \$ 5</u>
Total Fees	= \$4,330
<u>Less payments</u>	<u>= \$ 955</u>
Balance Due NASD Regulation, Inc.	= \$3,375

2. Respondent Sutro & Co., Inc. is solely liable for:

<u>Member Fees</u>	<u>= \$4,600</u>
Total Fees	= \$4,600
<u>Less payments</u>	<u>= \$4,600</u>
Balance Due NASD Regulation, Inc.	= \$ 0

3. Respondents Sutro & Co., Inc. and Matthew Brown are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$4,125</u>
Balance Due NASD Regulation, Inc.	= \$4,125

All balances are due and payable to NASD Regulation, Inc.

NASD Regulation, Inc. Office of Dispute Resolution  
Arbitration No. 99-00371  
Award Page 5 of 5

**Concurring Arbitrators' Signature(s)**



Allan Blau  
Public Arbitrator, Presiding Chair

5/8/00

Signature Date

\_\_\_\_\_  
Leonard Greenwold  
Public Industry Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Elwood A. Crandall  
Industry Arbitrator

\_\_\_\_\_  
Signature Date


**Concurring Arbitrators' Signature(s)**

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Allan Blau  
Public Arbitrator, Presiding Chair

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Signature Date



Leonard Greenwold  
Public Industry Arbitrator

5/4/00  
Signature Date

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Elwood A. Crandall  
Industry Arbitrator

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Signature Date

NASD Regulation, Inc. Office of Dispute Resolution  
Arbitration No. 99-00371  
Award Page 5 of 5

Concurring Arbitrators' Signature(s)

Allen Blau  
Public Arbitrator, Presiding Chair

Signature Date

Leonard Greenwald  
Public Industry Arbitrator

Signature Date

E. A. Crandall  
Elwood A. Crandall  
Industry Arbitrator

5/11/00  
Signature Date