

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimants

Anatoly and Anya Vinokurov

Case No. 99-01699

Name of Respondents

Alex Brown & Sons, Incorporated (n/k/a Deutsche Banc Alex. Brown, Inc.)  
Wall Street Access

Hearing Location: Philadelphia, PA

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**REPRESENTATION OF PARTIES**

Claimants Anatoly and Anya Vinokurov ("Claimants") were represented by Anatoly Vinokurov.

Respondent Alex Brown & Sons Incorporated n/k/a Deutsche Banc Alex. Brown, Inc. ("Alex Brown") was represented by Thomas P. Lloyd, Attorney for Alex Brown & Sons, Incorporated, Baltimore, MD.

Respondent Wall Street Access ("WSA") was represented by Denis P. Kelleher, Esq. of the law firm of Kelleher, Leone & Schwartz, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: September 16, 1999

Claimants' Amended Statement of Claim filed on or about: September 7, 2000

Claimants' Answer to Respondent Alex Brown's Counterclaim filed on or about: undated

Anatoly Vinokurov signed the Uniform Submission Agreement: April 9, 1999

Anya Vinokurov signed her Uniform Submission Agreement, although her submission agreement is undated, it was received on: May 15, 2001

Statement of Answer and Counterclaim filed by Alex Brown on or about: September 13, 1999

Alex Brown's Uniform Submission Agreement was executed by Daniel E. McIntyre, Managing Director: September 13, 1999.

Statement of Answer filed by WSA on or about: September 1, 1999

WSA's Answer to Claimant's Amended Statement of Claim filed: November 13, 2000

WSA's Uniform Submission Agreement was executed by Joseph A. Mendola, General Counsel: August 31, 1999

### CASE SUMMARY

Claimants asserted the following causes of action: violations of the Securities Exchange Act; fraud; misrepresentation; detrimental reliance; promissory estoppel; breach of implied contract of fair dealing; and negligence. Claimants alleged, among other things, that the causes of action relate to WSA's computer system failing to accept orders and/or delaying executions. Claimants alleged that Claimant Anatoly Vinokurov relied on WSA past handling of margin positions in Claimants' account and that WSA failed to provide Claimants with an opportunity to meet the margin call and sold their account out in a manner that caused Claimants' debit balance to increase significantly.

Unless specifically admitted in its Answer, WSA denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants have no private right of action based on alleged violation of margin rules and regulations; Claimants failed to state a claim pursuant to the Federal Rules of Civil Procedure 12(b)(6); Claimants failed to plead fraud with particularity; Claimants' amended statement of claim fails to state a claim for which relief can be granted; Claimants are estopped from asserting the claim set forth in the amended statement of claim due to their own acts and conduct; Claimants acted with full knowledge of the facts, ratified, approved, accepted, acquiesced in and confirmed in all respects the acts complained of; and, Claimants failed to mitigate their damages.

WSA counterclaimed against Claimants maintaining that they breached their contract with WSA. That Claimants' account was liquidated pursuant to a margin agreement. WSA asserted that Claimants have failed to pay the debit balance that remains due and owing in their account.

In its answer, Alex Brown maintained that pursuant to its clearing agreement with WSA that WSA is responsible for responding to customer complaints and should Respondents be found liable to Claimants, WSA is obligated to satisfy any entered judgment. Alex Brown adopted and incorporated WSA Answer, Counterclaim, Motion to Dismiss and Affirmative Defenses and asserted the following affirmative defenses: Claimants' claim fails to state a claim for relief which relief can be granted; Alex Brown acted in good faith at all times and at no time did it commit, directly or indirectly, any acts which could give rise to a valid claim; Claimants expressly approved, ratified, authorized and/or participated in the transactions about which they now complain; Claimants failed to use the requisite due diligence in monitoring, trading, managing and handling their own account; any loss which Claimants may have suffered was caused by their own conduct and negligence; Claimants' claim is barred pursuant to the doctrines of waiver, estoppel and ratification; Claimants failed to mitigate their damages; Claimants' claims are barred by the applicable statutes of limitations.

Claimants denied all allegations asserted by Respondents in their counterclaims and specifically maintained that the debit balance in their account was caused by fraudulent conduct of Respondents and is the direct and proximate result of Respondents negligence and

that Respondents counterclaims should be dismissed.

### **RELIEF REQUESTED**

Claimants, in their amended statement of claim, requested an award against WSA and Alex Brown, jointly and severally, in the amount of \$1,000,000. Claimants requested that Respondents counterclaims be dismissed in their entirety.

Respondent WSA and Alex Brown requested that Claimants' claims be dismissed in their entirety and that an Award of \$220,295.09 plus interest be awarded. Respondents also requested attorneys' fees and costs.

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

WSA made a motion to dismiss with prejudice for Claimants failure to comply with the Panel's discovery order. This motion was denied.

Alex Brown made a request to dismiss its counterclaim against Claimant with prejudice. The parties stipulated to this request.

Claimants made a request to dismiss with prejudice their claim against Alex Brown. The parties stipulated to this request.

WSA made a motion to dismiss Claimants' claim for Claimants failure to state a cause of action; this motion was denied.

The parties stipulated that WSA was the firm that liquidated the account and not Alex Brown.

The parties stipulated that Alex Brown was the custodian of the records as the clearing firm.

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.

After the hearing concluded, the panel noted that Claimant Anya Vinokurov, the joint account holder, had not signed a Submission Agreement. Claimant Anya Vinokurov was requested to sign the Submission Agreement which she did.

### **AWARD**

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

1. That Claimants' claim is denied in its entirety.
2. That Claimants are jointly and severally liable to Wall Street Access and shall pay to Wall Street Access the sum of \$198,534.00; plus interest on this amount at the rate of 6% simple interest per annum from August 31, 1998 until April 23, 2001.
3. That the parties shall bear their respective costs and fees, except as Fees are specifically addressed below.
4. That the parties shall bear their respective attorneys' fees.
5. That any and all claims for relief not specifically addressed herein are denied in their entirety.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300
Wall Street's Counterclaim fee	= \$1,000
Alex Brown's Counterclaim fee	= \$1,000

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. In this matter, both WSA and Alex Brown are the member firms and are parties.

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

#### **Adjournment Fees**

Adjournments requested during these proceedings:

January 30, 31, February 1 and 2, 2001, adjournment by Wall Street	= \$1,200
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#### **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 with Panel x \$1,200	= \$1,200
Pre-hearing conference: July 25, 2000	1 session
Two (2) Hearing sessions x \$1,200	= \$2,400
Hearing Date: April 23, 2001	<u>2 sessions</u>
Total Forum Fees	= \$3,600

The Panel assessed forum fees in this matter as follows:

1. Claimants are assessed forum fees in the amount of \$1,800.
2. Respondent WSA is assessed forum fees in the amount of \$1,800.

#### Fee Summary

Claimants are assessed the following fees:

Initial Filing Fee	= \$ 300
<u>Forum Fees</u>	= \$1,800
Total Fees	= \$2,100
<u>Less payments</u>	= \$1,425
Balance Due NASD Dispute Resolution, Inc.	= \$ 675

Respondent WSA is assessed the following fees:

Counterclaim Filing Fee	= \$1,000
Member Fees	= \$4,600
Adjournment Fee	= \$1,200
<u>Forum Fees</u>	= \$1,800
Total Fees	= \$8,600
<u>Less payments</u>	= \$5,350
Balance Due NASD Dispute Resolution, Inc.	= \$3,250

Respondent Alex Brown is assessed the following Fees:


Counterclaim Filing Fee	= \$1,000
<u>Member Fees</u>	= \$4,600
Total Fees	= \$5,600
<u>Less payments</u>	= \$6,725
Refund Due to Alex Brown	= \$1,125

All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Debra G. Speyer, Public Arbitrator, Presiding Chairperson  
Fred W. Miller, Public Arbitrator, Panelist  
Edward T. Borer, Non Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**

  
Debra G. Speyer, Esq., Chairperson  
Public Arbitrator

5/18/01  
Signature Date

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Fred W. Miller, Esq., Panelist  
Public Arbitrator

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Signature Date

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Edward T. Borer, Panelist  
Non Public Arbitrator

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Signature Date

May 24, 2001  
Date Award Served by NASD Dispute Resolution, Inc.

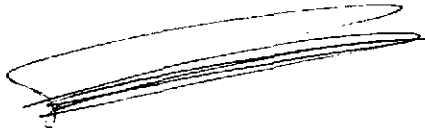
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Fred W. Miller, Public Arbitrator, Panelist  
Edward T. Borer, Non Public Arbitrator, Panelist

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Debra G. Speyer, Esq., Chairperson  
Public Arbitrator

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Signature Date

  
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Fred W. Miller, Esq., Panelist  
Public Arbitrator

May 16, 2001  
Signature Date

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Edward T. Borer, Panelist  
Non Public Arbitrator

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Signature Date

May 24, 2001  
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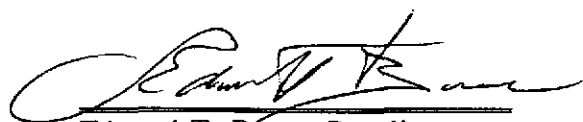
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Debra G. Speyer, Esq., Chairperson  
Public Arbitrator

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Signature Date

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Fred W. Miller, Esq., Panelist  
Public Arbitrator

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



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Edward T. Borer, Panelist  
Non Public Arbitrator

MAY 18, 2001  
Signature Date

May 24, 2001

Date Award Served by NASD Dispute Resolution, Inc.