

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Gary G. Edler

Case No. 99-04317
Milwaukee, Wisconsin

Name of Respondents

BT Alex. Brown Incorporated; and
Jeffrey Alan DeYoung

REPRESENTATION OF PARTIES

Claimant Gary G. Edler ("Edler") was represented by Otto K. Hilbert, II, Esq., of Robison, Waters & O'Dorisio, P.C., located in Denver, Colorado.

Respondents BT Alex. Brown Incorporated ("Alex. Brown") and Jeffrey Alan DeYoung ("DeYoung") were represented by Daniel J. Donovan, Esq., of DB Alex. Brown LLC. Located in Baltimore, Maryland.

CASE INFORMATION

Statement of Claim filed on or about: September 21, 1999.

Claimant Edler signed the Uniform Submission Agreement: September 9, 1999.

Statement of Answer filed by Respondents on or about: December 29, 1999

Respondent Alex. Brown signed the Uniform Submission Agreement: December 6, 1999.

Respondent Young signed the Uniform Submission Agreement on or about: December 6, 1999.

CASE SUMMARY

Claimant Edler asserted the following causes of action: negligence; negligent misrepresentation; breach of fiduciary duty; breach of contract; and negligent supervision. The causes of action relate to Edler's belief that he invested shares of stock of Superior Services Inc. in the BT Alex. Brown Exchange Fund, L.P. However, Alex. Brown failed to tell him the investment was rejected because of his position as a Director at Superior.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses

1. The Statement of Claim fails to state a cause of action upon which relief may be granted;
2. Respondents acted in good faith at all times, and at no time committed any acts which could give rise to a valid claim;
3. Edler failed to use the requisite due diligence in handling this investment and the delivery of his Superior stock;
4. Edler has realized no damages as a result of the alleged acts or omissions of Respondents;
5. Any losses Edler suffered were caused by his own conduct or negligence;
6. Neither Respondent was the cause of Edler's inability to participate in the Exchange Fund, and neither had (i) privity of contract with Edler or (ii) the authority to accept or reject his participation in the Exchange Fund;
7. The claims are barred pursuant to the doctrines of waiver, estoppel and ratification;
8. Edler failed to mitigate damages; and,
9. The claims are barred by all applicable statutes of limitations.

RELIEF REQUESTED

Claimant Edler requested compensatory damages of approximately \$800,000.00; punitive damages; statutory interest; attorneys' fees and other costs and expenses.

Respondents requested that the claim be dismissed; that they be awarded their costs and expenses incurred in defending the claim; and such other relief as was just and proper.

OTHER ISSUES CONSIDERED AND 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.

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. Respondents BT Alex. Brown Incorporated and Jeffrey Alan DeYoung are jointly and severally liable for and shall pay to the Claimant, Gary G. Edler, the sum of \$22,728.00 as compensatory damages;
2. In addition, Respondents BT Alex. Brown Incorporated and Jeffrey Alan DeYoung are jointly and severally liable for and shall pay to the Claimant, Gary G. Edler, the sum of \$10,000.00 as attorneys' fees. In deciding to award attorneys' fees, the panel considered the arguments of the parties, as well as the statutory and contractual authority filed in this matter, and determined that authority existed for an award of attorneys' fees to the Claimant;
3. The parties shall bear their own costs of arbitration, including any additional

- attorneys' fees, except for those specifically enumerated herein; and,
4. Any relief not specifically awarded is denied.

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 = \$ 375.00

Member Fees

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

Member surcharge = \$ 2,000.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$ 3,500.00

Adjournment Fees

Adjournments requested during these proceedings: None.

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 \$ 1,200.00 = \$ 1,200.00

Pre-hearing conference: March 21, 2000 1 session

Eight (8) Hearing sessions x \$ 1,200.00 = \$ 9,600.00

Hearing Dates March 12, 2001 2 sessions

March 13, 2001 2 sessions

March 14, 2001 2 sessions

March 15, 2001 2 sessions

Total Forum Fees = \$10,800.00

The Panel has assessed \$ 10,800.00 of the forum fees jointly and severally to Respondents BT Alex. Brown Incorporated and Jeffrey Alan DeYoung.

FEES SUMMARY

Claimant Gary G. Edler is solely liable for:

Initial Filing Fee	= \$ 375.00
Less payments	= \$ <u>2,000.00</u>
Balance Due Claimant Gary G. Edler	= \$ 1,625.00

Respondent BT Alex. Brown Incorporated is solely liable for:

Member Fees	= \$ 6,100.00
Less payments	= \$ <u>2,000.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 4,100.00

Respondents BT Alex. Brown Incorporated and Jeffrey Alan DeYoung are jointly and severally liable for:

Forum Fee	= \$10,800.00
Less payments	= \$ <u>0</u>
Balance Due NASD Dispute Resolution, Inc.	= \$10,800.00

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

ARBITRATION PANEL

Michael B. Laikin, Esq. - Public/Non-Public, Presiding Chair
Emanuel V. Gumina, Esq. - Public/Non-Public Arbitrator
Amy J. Wenzler - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Michael B. Laikin, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Emanuel V. Gumina, Esq.
Public Arbitrator

Signature Date

Amy J. Wenzler
Industry Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

NASD Dispute Resolution, Inc.
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Initial Filing Fee	= \$ 375.00
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Respondent BT Alex. Brown Incorporated is solely liable for:

Member Fees	= \$ 6,100.00
<u>Less payments</u>	<u>= \$ 2,000.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 4,100.00

Respondents BT Alex. Brown Incorporated and Jeffrey Alan DeYoung are jointly and severally liable for:

Forum Fee	= \$10,800.00
<u>Less payments</u>	<u>= \$ 0</u>
Balance Due NASD Dispute Resolution, Inc.	= \$10,800.00

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Michael B. Laikin, Esq.
Public Arbitrator, Presiding Chair

5-21-01
Signature Date

Emanuel V. Gumina, Esq.
Public Arbitrator

Signature Date

Amy J. Wenzler
Industry Arbitrator

Signature Date

5-25-01
Date of Service (For NASD-DR office use only)

NASD Dispute Resolution, Inc.
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Member Fees	= \$ 6,100.00
<u>Less payments</u>	= \$ 2,000.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 4,100.00

Respondents BT Alex. Brown Incorporated and Jeffrey Alan DeYoung are jointly and severally liable for:

Forum Fee	= \$10,800.00
<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$10,800.00

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Emanuel V. Gumina, Esq.
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Signature Date

5/21/01
 Signature Date

Amy J. Wenzler
 Industry Arbitrator

Signature Date

5-25-01

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FILED
MAY 23 2001

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