

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Leonard Beare and Cora Beare (Claimants) vs. J.W. Barclay & Company, Inc.,
Ehab Shalaby, and Edgar Alacan (Respondents)

Case Number: 99-05099

Hearing Site: Raleigh, North Carolina

REPRESENTATION OF PARTIES

Claimants, Leonard Beare and Cora Beare ("Beare") hereinafter collectively referred to as "Claimants" were represented by Hans Huang, Esq. of Maupin, Taylor & Ellis, P.A. located in Raleigh, North Carolina.

Respondents, J.W. Barclay & Company, Inc. ("Barclay") and Edgar Alacan ("Alacan") were represented by Daniel H. Hecht of Kaufmann, Feiner, Yamin, Gildin & Robbins, LLP located in New York, New York.

Respondent Ehab Shalaby ("Shalaby") was represented by Jeffrey Plotkin, Esq. of Jeffery Plotkin Attorney at Law located in New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: November 12, 1999.

Claimants signed the Uniform Submission Agreement: November 08, 1999.

Statement of Answer filed by Respondents Barclay and Alacan on or about:
April 10, 2000.

Respondent Barclay signed the Uniform Submission Agreement: April 06, 2000.

Respondent Alacan signed the Uniform Submission Agreement: April 06, 2000.

Statement of Answer filed by Respondent Shalaby on or about: February 14, 2000.

Respondent Shalaby signed the Uniform Submission Agreement: January 10, 2000.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability, churning, material omissions and other fraud, violation of NASD Rule 2310 and Illinois Securities Law of 1953; Illinois Consumer Fraud and Deceptive Practices Act; Common Law Fraud; breach of fiduciary duty; and negligence. The causes of action relate to unsuitable investments by Barclay in securities such as Tel-Com Wireless Cable, Digital Data Networks, Cable & Co., Worldwide, Retrix, Pride Automotive Group and Tellurian.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following affirmative defense: ratification of trading on the account by Claimant.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$205,000.00
Punitive Damages	\$550,000.00
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	unspecified

Respondents Barclay and Alacan requested:

Compensatory Damages	unspecified
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	unspecified

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.

In addition, Claimants filed a Motion for Change of Venue and Motion for Sanctions and Respondent Barclay made an Oral Motion for Continuance. The Panel heard oral argument via telephonic conference on January 10, 2001. The Panel being fully and otherwise advised in the premises, granted Claimants Motion for Change of Venue from Chicago, Illinois to Raleigh, North Carolina. The Panel denied Claimants Motion for Sanctions and Respondents Oral Motion for Continuance.

Pursuant to the Settlement Agreement between Claimants and the individual Respondents, Shalaby and Alacan, Claimant's Motion to Dismiss the Amended Statement of Claim against Shalaby and Alacan is granted, with prejudice.

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. Respondent J.W. Barclay & Company, Inc. is liable for and shall pay to Claimants Leonard and Cora Beare the sum of \$382,000.000 as compensatory damages.
2. In addition, Respondent J.W. Barclay & Company, Inc. is liable for and shall pay to Claimants Leonard and Cora Beare the sum of \$125,000.00 as attorney fees. In awarding attorney fees, the panel considered Morehead v. Lewis (N.D.Ill. 1977), 432 F.Supp.674; Roubik v. Merrill Lynch, 285 Ill.App.3d 217 (1996); and Cerajewski v. Kunkle, 285 Ill.App.3d 222 (1996) and determined that authority existed for an award of attorney fees to the Claimants.
3. Furthermore, Respondent J.W. Barclay & Company, Inc. is liable for and shall pay to Claimants Leonard and Cora Beare the sum of \$11,754.15 as costs.
4. In addition Respondent J.W. Barclay & Company, Inc. is liable for and shall pay to Claimants Leonard and Cora Beare the sum of \$350,000.00 as punitive damages. In awarding punitive damages, the panel considered Anvil Investment Limited Partnership v. Thornhill Condominiums Ltd., 85 Ill.App.3d 1108 and determined that authority existed for an award of punitive damages to the Claimants.
5. Any and all relief not specifically addressed herein is denied.

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	= \$375.00
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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(s) at the time of the events giving rise to the dispute. In this matter, the member firm is part.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$3,500.00</u>
Total	= \$6,100.00

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with Panel x \$1,200.00	= \$3,600.00
Pre-hearing conferences: October 11, 2000	1 session
January 03, 2001	1 session
January 10, 2001	1 session
Two (2) Hearing sessions x \$1,200.00	= \$2,400.00
Hearing Date: January 29, 2001	2 sessions
Total Forum Fees	= \$6,000.00

1. The Panel has assessed \$6,000.00 of the forum fees to Respondent Barclay.

Fee Summary

1. Claimants shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Total Fees	= \$ 375.00
<u>Less payments</u>	<u>= \$1,575.00</u>
Balance Due NASD Regulation, Inc.	= \$1,200.00

2. Respondent J.W. Barclay shall be and hereby is solely liable for:

Member Fees	= \$ 6,100.00
<u>Forum Fees</u>	<u>= \$ 6,000.00</u>
Total Fees	= \$12,100.00
<u>Less payments</u>	<u>= \$ 2,000.00</u>
Balance Due NASD Regulation, Inc.	= \$10,100.00

All balances are due to NASD Regulation, Inc.

ARBITRATION PANEL

Larry Carlson, Esq.	-	Public/Non-Public, Presiding Chair
Jack J. Herman, J.D.	-	Public/Non-Public Arbitrator
Allan H. Marx	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Larry Carlson

05/05/01

Larry Carlson, Esq.
Public Arbitrator, Presiding Chair

Signature Date

/s/ Jack Herman

05/04/01

Jack J. Herman, J.D.
Public Arbitrator

Signature Date

/s/ Allan H. Marx

05/04/01

Allan H. Marx
Industry Arbitrator

Signature Date

05/07/01

Date of Service (For NASD office use only)

4/01 FRI 11:44 FAX

NASD REGULATION

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NASD Dispute Resolution, Inc.
Case number: 99-05099
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2. Respondent J.W. Barclay shall be and hereby is solely liable for:

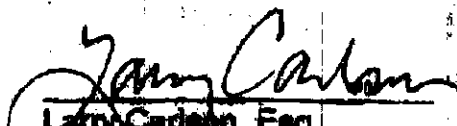
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Jack J. Herman, J.D.	-	Public/Non-Public Arbitrator
Allan H. Marx	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Larry Carlson, Esq.
Public Arbitrator, Presiding Chair

5 MAY 2001
Signature Date

Jack J. Herman, J.D.
Public Arbitrator

Signature Date

Allan H. Marx
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.

Case number: 99-05099

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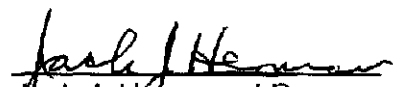
ARBITRATION PANEL

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Jack J. Herman, J.D.	-	Public/Non-Public Arbitrator
Allan H. Marx	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Larry Carlson, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Jack J. Herman, J.D.
Public Arbitrator

May 4, 2001

Signature Date

Allan H. Marx
Industry Arbitrator

Signature Date

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NASD Dispute Resolution, Inc.

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Concurring Arbitrators' Signatures

Larry Carlson, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Jack J. Herman, J.D.
Public Arbitrator

Signature Date


Allan H. Marx
Industry Arbitrator

5/4/01
Signature Date

Date of Service (For NASD office use only)