

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Name of Claimant

John Franklin Bower, Jr.

Case No. 00-03693

Names of Respondents

Lutheran Brotherhood
Lutheran Brotherhood Securities Corp.

Hearing Site: Tampa, Florida

REPRESENTATION OF PARTIES

For John Franklin Bower, Jr., hereinafter referred to as "Claimant": William J. Waggoner, Esq., Waggoner, Hamrick, Hasty, Monteith & Kratt, P.L.L.C., Charlotte, North Carolina, and Christian A. Preus, Esq. and Kerry L. Middleton, Esq., Meagher & Geer, P.L.L.P., Minneapolis, Minnesota.

For Lutheran Brotherhood and Lutheran Brotherhood Securities Corp., hereinafter collectively referred to as "Respondents": Scott M. Ratchick, Esq., Hunton & Williams, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: August 23, 2000.

Claimant signed the Uniform Submission Agreement on: December 28, 2000.

Statement of Answer and Counterclaim filed by Respondents on or about: December 8, 2000.

Respondent Lutheran Brotherhood signed the Uniform Submission Agreement on: December 4, 2000.

Respondent Lutheran Brotherhood Securities Corp. signed the Uniform Submission Agreement on: November 27, 2000.

Statement of Answer to Counterclaim filed by Claimant on or about: January 8, 2001.

Motion and Memorandum in Support of Motion for Summary Judgment on the Claimant's Disability Insurance Claims, filed by Claimant on or about: May 16, 2001.

Motion for Summary Judgment and Memorandum of Law in Support Thereof on Breach of General Agent Agreements Claim, filed by Respondents on or about: August 17, 2001.

Opposition to Respondents' Motion for Summary Judgment on Claim of Breach of General Agent Agreements, filed by Claimant on or about: August 31, 2001.

Reply Brief in Support of Respondents' Motion for Summary Judgment, filed by Respondents on or about: September 21, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: 1) breach of contract; 2) fraudulent misrepresentation; 3) fraudulent inducement; 4) intentional infliction of emotional distress; 5) violation of North Carolina statutes, namely Section 58-63-15 and 75-1.1, concerning insurance claims handling and unfair and deceptive trade practices; and 6) outrageous conduct. The causes of action relate to: 1) Respondents' breaches of general agent agreements with Claimant and Respondents' marketing policy by constructively terminating Claimant's employment without cause; and 2) Respondent Lutheran Brotherhood's breach of disability and life insurance policies by failing to pay benefits under the policies without any justification.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: 1) Claimant failed to state a claim upon which relief may be granted; 2) Claimant's claims are barred by his contributory negligence and other failures on his part; 3) Claimant's claims are barred by the doctrines of estoppel, in pari delicto, waiver, and ratification; 4) Claimant's claims are barred by applicable statutes of limitations; 5) Claimant's claims are barred as a matter of law because Respondents lacked the requisite scienter; 6) Claimant's claims are barred as a matter of law because Claimant's alleged reliance upon Respondents was not justifiable; 7) Claimant's claims are barred as a matter of law because Respondents did not owe Claimant the duty of care or loyalty alleged in the Statement of Claim; and 8) Claimant's claims are insufficient as a matter of law; the alleged wrongdoing by Respondents did not proximately cause legal injury to Claimant in that the acts of third parties are intervening, superseding causes of Claimant's claimed injuries for which Respondents are not responsible.

Respondents asserted a cause of action in their counterclaim for breach of a Loan Agreement and Promissory Note. Respondents seek recovery of the outstanding balance under a certain Loan Agreement and certain Promissory Note executed on March 12, 1998, including principal and accrued interest, in the approximate amount of \$95,000.00 as of December 8, 2000.

Unless specifically admitted in his Answer, Claimant denied the allegations of wrongdoing made in the Counterclaim and asserted the following defenses: 1) Respondents' claims are barred by the doctrines of estoppel, waiver, payment, duress, fraud, and accord and satisfaction; 2) Respondents failed to state a claim upon which relief may be granted; and 3)

Respondent Lutheran Brotherhood Securities Corp. is not a party to any of the transactions at issue in the Counterclaim and, therefore Respondent Lutheran Brotherhood Securities Corp. lacks standing to pursue said claims.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in the amount of \$13,395,445.00 for lost income; 2) unspecified compensatory damages for breach of various insurance contracts; 3) compensatory damages in the amount of \$250,000.00 for emotional distress; 4) punitive damages of at least \$13,395,445.00; 5) treble damages; 6) costs; 7) attorneys' fees; and 8) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents requested in their Statement of Answer: 1) dismissal of the Statement of Claim; 2) costs; 3) attorneys' fees; and 4) and such other relief the Panel deemed just and proper.

Respondents requested in their Counterclaim: 1) an order compelling Claimant to immediately return to Respondents all Respondents' property, including but not limited to files, customer lists and other information regarding customers, forms, agreements, sales and financial information, and other printed materials, together with all copies in his possession; 2) compensatory damages in the amount of \$95,000.00; 3) accrued interest from December 8, 2000 under the Loan Agreement and Promissory Note; 4) costs; 5) attorneys' fees; and 6) such other relief the Panel deemed just and proper.

Claimant requested in his Statement of Answer to the Counterclaim: 1) dismissal of the Counterclaim; 2) a finding that the Counterclaim is frivolous and made in bad faith; 3) costs; 4) attorneys' fees; 5) a finding that the loan was made by Respondent Lutheran Brotherhood as an inducement to Claimant to continue as a general agent on a long-term basis and that Respondent Lutheran Brotherhood specifically forgave all amounts due under the loan agreement; and 6) such other relief the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On April 4, 2000, Claimant filed suit against Respondents in the General Court of Justice for Mecklenberg County, North Carolina. Respondents subsequently removed the case to federal court and filed a motion to compel arbitration of all disputes between the parties. By its Order of July 5, 2000, the United States District Court for the Western District of North Carolina granted Respondents' motion to compel arbitration. Claimant filed his Statement of Claim with NASD Dispute Resolution pursuant to the court's order compelling arbitration.

On June 11, 2001, the Panel denied Claimant's Motion for Summary Judgment on the Claimant's Disability Insurance Claims.

On September 20, 2001, the Panel denied Respondents' Motion for Summary Judgment on Breach of General Agent Agreements Claim.

At the evidentiary hearing on November 1, 2001, Respondents made an ore tenus motion to recuse Arbitrator Harold Engelman. Claimant opposed Respondents' motion. After careful consideration, Arbitrator Engelman withdrew from the Panel. The parties requested the appointment of a replacement arbitrator, and the parties agreed to the manual selection and appointment of a replacement arbitrator by NASD Dispute Resolution. On November 1, 2001, NASD Dispute Resolution appointed replacement Arbitrator J. Evan MacWhirter.

At the evidentiary hearing, the Panel denied Respondents' motion to dismiss.

The parties at the evidentiary hearing agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be executed.

AWARD

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

1. Respondents are liable, jointly and severally, and shall pay to Claimant compensatory damages in the amount of \$20,700.00, plus pre-judgment interest at the rate of 10% per annum from October 31, 1999 through January 15, 2002. Post-judgment interest shall accrue in accordance with Rule 10330(h) of the NASD Code of Arbitration Procedure (the "Code").
2. Respondents are liable, jointly and severally, and shall pay to Claimant attorneys' fees in the amount of \$33,540.81. Attorneys' fees are awarded pursuant to the Business Overhead Expense policy.
3. Respondents are liable, jointly and severally, and shall pay to Claimant \$600.00 which represents reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.
4. All claims asserted by Respondents are denied.
5. Respondents' requests for attorneys' fees are denied.
6. Any and all relief not specifically addressed herein, including punitive damages and treble damages, 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	= \$ 600.00
Counterclaim filing fee	= \$1,000.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm, Respondent Lutheran Brotherhood Securities Corp., is a party.

Member surcharge	= \$3,600.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$5,000.00

Adjournment Fees

Adjournments requested during these proceedings:

On June 29, 2001, the parties jointly requested an adjournment of the evidentiary hearing scheduled for July 23-26, 2001 in order to conduct mediation through NASD Dispute Resolution. Pursuant to Rule 10403 of the Code, the adjournment fee of \$1,200.00 was waived.

Forum Fees and Assessments

The Panel has the authority to assess 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:

One (1) Pre-hearing session with Panel x \$1,200.00	= \$ 1,200.00
Pre-hearing conference: March 12, 2001 1 session	

Fifteen (15) Hearing sessions x \$1,200.00	= \$18,000.00
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Hearing Dates:	October 29, 2001	2 sessions
	October 30, 2001	2 sessions
	October 31, 2001	2 sessions
	November 1, 2001	2 sessions
	November 2, 2001	2 sessions
	January 3, 2002	2 sessions
	January 4, 2002	2 sessions

January 11, 2002 1 session

Total Forum Fees	= \$19,200.00
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The Panel has assessed the total forum fees of \$19,200.00 jointly and severally to 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.

There were no administrative costs incurred during these proceedings.

FEE SUMMARY

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$600.00
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Total Fees	= \$600.00
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Less payments	= \$600.00
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Balance Due NASD Dispute Resolution, Inc.	= \$0.00
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Respondent Lutheran Brotherhood Securities Corp. be and hereby is solely liable for:

Member Fees	= \$9,200.00
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Total Fees	= \$9,200.00
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Less payments	= \$9,200.00
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Balance Due NASD Dispute Resolution, Inc.	= \$0.00
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Respondents be and hereby are jointly and severally liable for:

Counterclaim Filing Fee	= \$ 1,000.00
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Forum Fees	= \$19,200.00
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Total Fees	= \$20,200.00
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Less payments	= \$ 1,750.00
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Balance Due NASD Dispute Resolution, Inc.	= \$18,450.00
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All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

James E. Brucki, Jr.	-	Non-Public Arbitrator, Presiding Chair
Patricia A. Boorman	-	Non-Public Arbitrator
J. Evan MacWhirter	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
James E. Brucki, Jr.
Non-Public Arbitrator, Presiding Chair

Signature Date

/s/
 Patricia A. Boorman
 Non-Public Arbitrator

Signature Date

/s/
J. Evan MacWhirter
Non-Public Arbitrator

Signature Date

February 11, 2002
Date of Service

ARBITRATION PANEL

James E. Brucki, Jr.	-	Non-Public Arbitrator, Presiding Chair
Patricia A. Boorman	-	Non-Public Arbitrator
J. Evan MacWhirter	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


James E. Brucki, Jr.
Non-Public Arbitrator, Presiding Chair

2/5/2002
Signature Date

Patricia A. Boorman
Non-Public Arbitrator

Signature Date

J. Evan MacWhirter
Non-Public Arbitrator

Signature Date

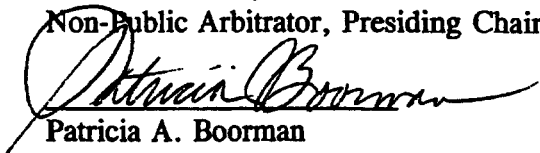
Date of Service

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J. Evan MacWhirter	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

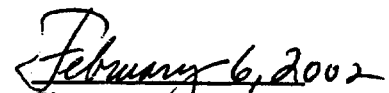
James E. Brucki, Jr.
Non-Public Arbitrator, Presiding Chair



Patricia A. Boorman
Non-Public Arbitrator

J. Evan MacWhirter
Non-Public Arbitrator

Signature Date



Signature Date

Signature Date

Date of Service

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Patricia A. Boorman	-	Non-Public Arbitrator
J. Evan MacWhirter	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

James E. Brucki, Jr.
Non-Public Arbitrator, Presiding Chair

Signature Date

Patricia A. Boorman
Non-Public Arbitrator

Signature Date


J. Evan MacWhirter
Non-Public Arbitrator

Feb. 8, 2002

Signature Date

Date of Service