

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Dean Witter Reynolds Inc., (Claimant) vs. William F. Matthews, Jr., (Respondent)

Case Number: 00-05764

Hearing Site: Buffalo, New York

REPRESENTATION OF PARTIES

Claimant, Dean Witter Reynolds Inc., hereinafter referred to as "Claimant": Diane C. Fischer, Esq., Kane & Fischer, Ltd., Chicago, IL.

Respondent, William F. Matthews, Jr., hereinafter referred to as "Respondent": Donald T. Cook, Esq., Donald T. Cook, P.C., Buffalo, NY.

CASE INFORMATION

Statement of Claim filed on or about: December 28, 2000.

Reply to Counterclaim filed by Claimant on or about: May 16, 2001.

Claimant signed the Uniform Submission Agreement: December 22, 2000.

Statement of Answer and Counterclaim filed by Respondent on or about: April 5, 2001.

Respondent signed the Uniform Submission Agreement: April 5, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: breach of Promissory Notes dated 2/9/00 and 11/2/00 respectively.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defense: Respondent was fraudulently induced to sign the promissory notes in question.

In his Counterclaim, Respondent asserted the following causes of action: malicious and wrongful discharge; defamatory and malicious statements made by Claimant's agents and employees; unfair practices regarding Respondent's participation in certain syndications; wrongful solicitation of Respondent's customers; wrongful seizure and retention of Respondent's personal property; and failure to pay Respondent his earned Deferred Compensation.

Unless specifically admitted in its Reply, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: Respondent was an at-will employee and the promissory notes are enforceable; Claimant did not defame Respondent; Respondent was not entitled to allocations in syndicate offerings; Claimant's solicitation of its clients was not wrongful; Claimant did not convert Respondent's personal property; and Respondent fails to state a claim regarding "Deferred Compensation".

RELIEF REQUESTED

Claimant requested:

- a. The principal balance due and owing under Note 1 in the amount of \$34,500.00;
- b. Interest accrued during the term of Note 1 at the contract rate of 6%, totaling \$986.58;
- c. Federal and State taxes due on the October 1999 forgiveness under Note 1 in the amount of \$2,745.80;
- d. Interest at the contract rate of 6% per annum (\$5.67 per day) on the balance due and owing under Note 1 from the date of default (4/13/00) to the date of payment;
- e. The principal balance due and owing under Note 2 in the amount of \$7,401.00;
- f. Interest accrued during the term of Note 2 at the contract rate of 6%, totaling \$200.08;
- g. Federal and State taxes due on the November 1999 forgiveness under Note 2 in the amount of \$1,125.98;
- h. Interest at the contract rate of 6% per annum (\$1.22 per day) on the balance due and owing under Note 2 from the date of default (4/13/00) to the date of payment;
- i. The costs of collection of this proceeding, including attorneys' fees as agreed to under the terms of Note 1 and Note 2; and
- j. Any and all further relief that the Panel deems just and proper.

In his Answer and Counterclaim, Respondent requested that the Panel:

- a. Dismiss the claims of Claimant against Respondent;
- b. Deny all other relief requested by Claimant;
- c. Award compensatory damages in favor of Respondent against Claimant on the First Counterclaim in the total sum requested in the Statement of Claim;
- d. Award compensatory damages in favor of Respondent against Claimant on the Second Counterclaim in the sum of \$100,000.00;
- e. Award punitive damages in favor of Respondent against Claimant on the Second Counterclaim in the sum of \$1,000,000.00;

- f. Award compensatory damages in favor of Respondent against Claimant on the Third Counterclaim in the sum of \$100,000.00;
- g. Award punitive damages in favor of Respondent against Claimant on the Third Counterclaim in the sum of \$1,000,000.00;
- h. Award compensatory damages in favor of Respondent against Claimant on the Fourth Counterclaim in the sum of \$50,000.00;
- i. Award punitive damages in favor of Respondent against Claimant on the Fourth Counterclaim in the sum of \$1,000,000.00;
- j. Award compensatory damages in favor of Respondent against Claimant on the Fifth Counterclaim in the sum of \$100,000.00;
- k. Award punitive damages in favor of Respondent against Claimant on the Fifth Counterclaim in the sum of \$1,000,000.00;
- l. Award compensatory damages in favor of Respondent against Claimant on the Sixth Counterclaim in the sum of \$100,000.00;
- m. Award punitive damages in favor of Respondent against Claimant on the Sixth Counterclaim in the sum of \$1,000,000.00;
- n. Award compensatory damages in favor of Respondent against Claimant on the Seventh Counterclaim the sum of \$50,000.00;
- o. Award reasonable attorneys' fees to Respondent; and
- p. Award such other and further relief as the Panel may deem just and proper.

In its Reply, Claimant requested that the Counterclaim be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearings in this matter, Respondent verbally withdrew the following allegations from his Counterclaim: defamatory and malicious statements made by Claimant's agents and employees and failure to pay Respondent his earned Deferred Compensation.

Claimant's motion to preclude Respondent from producing evidence with regard to his claim for damages was denied by the Panel.

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. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$52,464.55, which includes principal, interest, and reductions for State and Federal taxes, through June 21, 2002, on Promissory Notes 1 and 2.
2. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$11,378.25 for attorneys' fees, as afforded in the Promissory Notes.
3. Respondent will be provided a copy of Arbitrator Exhibit No. 2 by the NASD Case Administrator.
4. Claimant be and hereby is directed to return to Respondent the original Rolodex and business card file inappropriately taken from him by Claimant.
5. All requests for punitive damages are hereby denied.
6. All other requests for relief are hereby 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	= \$1,000.00
Counterclaim filing fee	= \$ 600.00

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 events giving rise to the dispute. In this matter, Dean Witter Reynolds Inc. is a party.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$5,000.00

Adjournment Fees

Adjournments requested during these proceedings:

June 18 & 19, 2002, adjournment by Respondent = WAIVED

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:

One (1) Pre-hearing session with Panel x \$1,200.00	= \$1,200.00
Pre-hearing conference: August 28, 2001	1 session
Four (4) Hearing sessions x \$1,200.00	= \$4,800.00
Hearing Dates: June 20, 2002	2 sessions
June 21, 2002	2 sessions
<hr/> Total Forum Fees	<hr/> = \$6,000.00

1. The Panel has assessed \$3,000.00 of the forum fees against Claimant.
2. The Panel has assessed \$3,000.00 of the forum fees against Respondent.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 6,400.00
<u>Forum Fees</u>	<u>= \$ 3,000.00</u>
Total Fees	= \$10,400.00
<u>Less payments</u>	<u>= \$ 8,000.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,400.00
2. Respondent be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$ 3,000.00</u>
Total Fees	= \$ 3,600.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,600.00

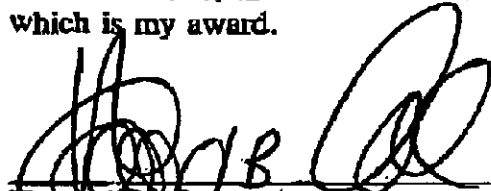
All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Howard B. Cohen, Esq.	-	Public Arbitrator, Presiding Chair
Werner Schenk	-	Public Arbitrator
Robert Shiffra, Esq.	-	Industry Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Howard B. Cohen, Esq.
Public Arbitrator, Presiding Chair

7-15-02
Signature Date

Werner Schenk
Public Arbitrator

Signature Date

Robert Shiffra, Esq.
Industry Arbitrator

Signature Date

July 18, 2002
Date of Service (For NASD office use only)

ARBITRATION PANEL

Howard B. Cohen, Esq.
Werner Schenk
Robert Stiffra, Esq.

Public Arbitrator, Presiding Chair
Public Arbitrator
Industry Arbitrator

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Howard B. Cohen, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Werner Schenk
Public Arbitrator



Signature Date

Robert Stiffra, Esq.
Industry Arbitrator

Signature Date

July 18, 2002

Date of Service (For NASD office use only)

ARBITRATION PANEL

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Werner Schenk	-	Public Arbitrator
Robert Shiffra, Esq.	-	Industry Arbitrator

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Howard B. Cohen, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Werner Schenk
Public Arbitrator

Signature Date


Robert Shiffra, Esq.
Industry Arbitrator

7-11-02
Signature Date

July 18, 2002
Date of Service (For NASD office use only)