

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Margaret Buckley, (Claimant) vs. Dirks & Company, Inc., (Respondent)

Case Number: 01-00385

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Margaret Buckley, hereinafter referred to as "Claimant": Julie Withers, Legal Intern, Lincoln Square Legal Services, Inc., New York, NY.

Respondent, Dirks & Company, Inc., hereinafter referred to as "Respondent": David A. Schrader, Esq., Schrader & Schoenberg, LLP, New York, NY. Previously represented by: Robert L. Gross, Dirks & Company, Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: January 22, 2001.
Amended Statement of Claim filed on or about: December 11, 2001.
Second Amended Statement of Claim filed on or about: April 2, 2002.
Claimant signed the Uniform Submission Agreement: January 20, 2001.

Statement of Answer filed by Respondent on or about: March 13, 2001.
Statement of Answer to Amended Statement of Claim filed by Respondent on or about: January 7, 2002.
Respondent signed the Uniform Submission Agreement: March 20, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: charging of excessive markups and markdowns; incorrect accounting procedures; and falsification of prices. Claimant's claim involved unspecified securities.

Unless specifically admitted in its Answers, Respondent denied the allegations made in the Statement of Claim and Amended Statements of Claim and asserted the following defenses: the trades in question were executed and confirmed on an agency basis; the prices confirmed to the customer were exactly the same as the prices confirmed by the contra brokers, and they did not include markups or markdowns, excessive or otherwise; an agency commission, as agreed upon, was charged on each transaction; and Respondent has not made markets in the securities that Claimant traded and therefore there was no occasion to act as principal or to mark up or down the prices on the transactions involved.

RELIEF REQUESTED

In her Statement of Claim, Claimant requested compensatory damages in the amount of \$500,000.00 and punitive damages in the amount of \$500,000.00.

In her Amended Statement of Claim, Claimant increased her request to compensatory damages in the amount of \$560,000.00 and punitive damages in the amount of \$560,000.00.

In her Second Amended Statement of Claim, Claimant reduced her request to the following:

- a. \$84,927.16 for overcharges on average price trades;
- b. \$2,103.87 for overcharges on commissions; and
- c. \$261,093.09 for punitive damages.

Respondent requested that this matter be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

1) 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. 2) Prior to the close of the records, Claimant requested and was granted the opportunity to submit a post hearing brief on May 1, 2002, solely on the issue of punitive damages. Respondent was allowed until May 10, 2002 to file its responsive brief. Respondent, through new counsel, requested and was granted an extension until May 17, 2002 to file its brief. Respondent's second request for an extension until May 24, 2002 was denied. The Panel deliberated on May 21, 2002 and as of that date, Respondent had not submitted its brief.

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 \$57,731.04 as compensatory damages.
2. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$27,813.58 as punitive damages. The Panel awarded punitive damages pursuant to In re R.C. Layne Construction, Inc. v. Stratton Oakmont, Inc., 651 N.Y.S.2d 973 (1st Dep't 1996), as argued in Claimant's Brief in Support of an Award of Punitive Damages.
3. 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	= WAIVED
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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 at the time of the events giving rise to the dispute. In this matter, Dirks & Company, Inc. is a party.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$4,500.00

Adjournment Fees

Adjournments requested during these proceedings:

Jan. 7 & 8, 2002, adjournment by Claimant	= \$1,200.00
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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 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:	July 17, 2001	1 session
	October 11, 2001	1 session
	March 14, 2002	1 session
Four (4) Hearing sessions x \$1,200.00		= \$4,800.00
Hearing Dates:	April 22, 2002	2 sessions
	April 24, 2002	2 sessions
Total Forum Fees		= \$8,400.00

The Panel has assessed all of the forum fees against Respondent.

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.

1. Respondent, requested tapes, \$90.00.

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Adjournment Fee</u>	= \$ 1,200.00
<u>Total Fees</u>	= \$ 1,200.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,200.00

2. Respondent be and hereby is solely liable for:

Member Fees	= \$ 7,600.00
Forum Fees	= \$ 8,400.00
<u>Administrative Costs</u>	= \$ 90.00
<u>Total Fees</u>	= \$16,090.00
<u>Less payments</u>	= \$ 600.00
Balance Due NASD Dispute Resolution, Inc.	= \$15,490.00

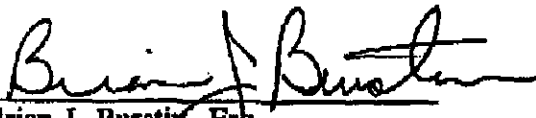
All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Brian J. Burstin, Esq.	-	Public Arbitrator, Presiding Chair
Chester Burger	-	Public Arbitrator
Anju D. Jessani	-	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.



Brian J. Burstin, Esq.
Public Arbitrator, Presiding Chair

5/23/02

Signature Date

Chester Burger
Public Arbitrator

Signature Date

Anju D. Jessani
Industry Arbitrator

Signature Date

May 24, 2002

Date of Service (For NASD office use only)

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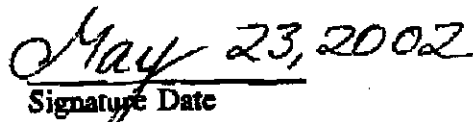
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