

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Sands Brothers & Co., Ltd., (Claimant) vs. Trautman Wasserman & Co., Inc., Robert Spiegel, James Palmer, Gordon Fallone, Andrew Gallion, Sean Metrose, William Watson, John McGraw, and Shaheem Patel, (Respondents)

Case Number: 01-01413

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Sands Brothers & Co., Ltd., hereinafter referred to as "Claimant": Richard A. Roth, Esq., Littman Krooks & Roth, P.C., New York, NY.

Respondents, Trautman Wasserman & Co., Inc. ("Trautman"), Robert Spiegel ("Spiegel"), James Palmer ("Palmer"), Gordon Fallone ("Fallone"), Andrew Gallion ("Gallion"), Sean Metrose ("Metrose"), William Watson ("Watson"), John McGraw ("McGraw"), and Shaheem Patel ("Patel"), hereinafter collectively referred to as "Respondents": Daniel L. Cantor, Esq., O'Sullivan, LLP (formerly O'Sullivan Graev & Karabell, LLP), New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: March 20, 2001.

Amendment to Statement of Claim filed on or about: May 31, 2001.

Response to Counterclaim, Motion to Dismiss Counterclaim, and Opposition to Respondents'

Motion to Dismiss filed by Claimant on or about: June 12, 2001.

Claimant signed the Uniform Submission Agreement on December 5, 2001.

Statement of Answer, Motion to Dismiss, and Counterclaim filed by Respondents on or about: April 6, 2001.

Trautman did not sign a Uniform Submission Agreement.

Spiegel did not sign a Uniform Submission Agreement.

Palmer did not sign a Uniform Submission Agreement.

Fallone did not sign a Uniform Submission Agreement.

Gallion did not sign a Uniform Submission Agreement.

Metrose did not sign a Uniform Submission Agreement.

Watson did not sign a Uniform Submission Agreement.

McGraw did not sign a Uniform Submission Agreement.

Patel did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of employment contracts; breach of fiduciary duty; tortious inducement of breach of fiduciary duty; unfair competition; conversion; tortious interference with economic relationships; breach of the implied covenant of good faith and fair dealing; unjust enrichment; breach of agreements; tortious interference with contracts; prima facie tort; and raiding.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Respondent Fallon is not subject to any restrictive covenant; Claimant's restrictive covenants do not apply to the brokers' personal customers; Claimant does not have a legitimate interest in the customers identified and developed by Respondents Spiegel and Palmer; Claimant does not have a legitimate interest in protecting the customer information at issue in any event; Claimant's own actions with respect to customer information preclude any determination that such information constitutes a trade secret; the claim for breach of implied covenant of good faith and fair dealing fails because allegations that a party has breached the duty of good faith and fair dealing do not give rise to a cause of action independent of a claim for breach of contract; Claimant's claim for a declaratory judgment should be dismissed because money damages would provide a complete and adequate remedy in the highly unlikely event that Claimant were to prevail on any of its claims; Respondents' actions were motivated by business purposes, which bars Claimant's claim for prima facie tort; and there is no separate cause of action for tortious interference with economic relationships under New York law.

In their Counterclaim, Respondents asserted the following causes of action: malicious prosecution and abuse of the legal process; willful failure to pay earned wages; defamation; and unfair competition.

Unless specifically admitted in its Response, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: the Counterclaims fail to state claims for which relief can be granted; Respondents are not entitled to any award of attorneys' fees or other fees and costs; Respondents are barred by one or more of the following doctrines: ratification, estoppel, waiver, laches, and unclean hands; Respondents are not entitled to pre-award or post-award interest; and Respondents have suffered no damages.

RELIEF REQUESTED

Claimant requested judgment as follows:

- a. Granting judgment in favor of Claimant and against Respondents for compensatory damages in the approximate amount of \$1,000,000.00;

- b. Granting judgment in favor of Claimant and against Respondents for punitive damages in the approximate amount of \$1,000,000.00;
- c. Granting judgment in favor of Claimant and against Respondents for damages in the approximate amount of \$1,000,000.00;
- d. Granting judgment in favor of Claimant and against Respondents for damages in the approximate amount of \$75,000.00;
- e. Directing that Respondents effect the immediate return of all originals, transcriptions, photocopies, and summaries of Claimant's proprietary and trade secret property and all documents based in whole or in part upon any information contained in any of the foregoing, whether in writing or any other medium;
- f. Enjoining Respondents by enforcing the employment agreements entered into by Respondent Brokers and Claimant which expressly provide for the issuance of injunctive relief under the present circumstances to "protect and preserve the status quo" pending arbitration;
- g. Enjoining Respondents from directly or indirectly soliciting, by any means, any customers whom Respondent Brokers served or whose names became known to Respondents while they were employed by Claimant;
- h. Enjoining Respondents from directly or indirectly transferring the accounts from Claimant to Trautman or any other competitor of Claimant;
- i. Enjoining Respondents from accepting business from the accounts that were solicited in violation of the employment agreements;
- j. Enjoining Respondents from communicating with or otherwise contacting, directly or indirectly, any person, entity, or corporation who was a customer of Claimant while Respondent Brokers were employed by Claimant;
- k. Enjoining Respondents from using in any manner whatsoever or disclosing the contents of Claimant's confidential and proprietary information (including, without limitation, Claimant's records, account books, account statements, customer lists, customer leads, or any other of Claimant's information and materials in Respondents' possession, whether original, duplicated, computerized, handwritten, or in any other form whatsoever) regarding Claimant's customers or any other matter involving Claimant, and which Respondent Brokers obtained while employees of Claimant;
- l. All costs incurred by Claimant in this action, including but not limited to, filing fees and attorneys' fees, in the approximate amount of \$100,000.00;
- m. An Order declaring the employment agreements lawful and valid;
- n. An Order expanding the non-solicitation provision of the Respondent Brokers' employment agreements to permanently enjoin them from soliciting Claimant's customers;

- o. Granting Claimant its costs, disbursements, and attorneys' fees in this action; and
- p. Granting Claimant such other and further relief as to the Panel seems just, proper, and equitable.

In their Answer and Counterclaim, Respondents requested that the Panel:

- a. Dismiss the Statement of Claim in its entirety;
- b. Enter an Award denying Claimant any and all relief;
- c. Award Respondents damages (including punitive damages) arising out of their Counterclaim in an amount to be determined;
- d. Award Respondents their reasonable costs and attorneys' fees; and
- e. Grant Respondents such other and further relief as the Panel deems just and proper.

In its Response, Claimant requested that the Panel dismiss all of Respondents' Counterclaims and award Claimant any other relief which the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Trautman, Gallion, Metrose, Watson, and McGraw did not attend the hearings in this matter, however they were represented by their attorney, Mr. Cantor. Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Trautman, Gallion, Metrose, Watson, and McGraw have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Trautman, Gallion, Metrose, Watson, and McGraw present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Trautman, Spiegel, Palmer, Fallone, Gallion, Metrose, Watson, McGraw, and Patel did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues

submitted for determination as follows:

1. Respondents be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$34,394.00 as compensatory damages, plus interest at the rate of 9% per annum accruing from March 15, 2001 through July 15, 2001.
2. Claimant be and hereby is liable for and shall pay to Respondents, jointly and severally, the sum of \$105,000.00 as compensatory damages, plus interest at the rate of 9% per annum accruing from March 15, 2001 through November 15, 2001.
3. All requests for punitive damages are hereby denied.
4. 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	= \$ 2,000.00
Injunctive Relief fee	= \$ 2,500.00
Counterclaim filing fee	= \$ 500.00

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, Sands Brothers & Co., Ltd. and Trautman Wasserman & Co., Inc. are parties.

Sands Brothers & Co., Ltd.

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

Trautman Wasserman & Co., Inc.

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

Hearing process fee = \$ 4,500.00

Adjournment Fees

Adjournments requested during these proceedings:

May 2 & 3, 2001, adjournment by Claimant = \$ 1,200.00

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:

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00
Pre-hearing conference: June 20, 2001 1 session

Eleven (11) Hearing sessions x \$1,200.00 = \$13,200.00

Hearing Dates: May 16, 2001 2 sessions
June 14, 2001 2 sessions
June 21, 2001 2 sessions
July 3, 2001 2 sessions
September 7, 2001 1 session
November 9, 2001 2 sessions

Total Forum Fees = \$13,650.00

1. The Panel has assessed \$6,825.00 of the forum fees against Claimant.
2. The Panel has assessed \$6,825.00 of the forum fees jointly and severally against 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.

1. Claimant, requested tapes, \$60.00.
2. Trautman, requested tapes, \$135.00.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 2,000.00
Injunctive Relief Fee	= \$ 2,500.00
Member Fees	= \$ 7,600.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 6,825.00
<u>Administrative Costs</u>	= \$ 60.00
Total Fees	= \$20,185.00
<u>Less payments</u>	= \$ 8,300.00
Balance Due NASD Dispute Resolution, Inc.	= \$11,885.00

2. Trautman be and hereby is solely liable for:

Member Fees	= \$ 7,600.00
<u>Administrative Costs</u>	= \$ 135.00
Total Fees	= \$ 7,735.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 7,735.00

3. Respondents be and hereby are jointly and severally liable for:

Counterclaim Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$ 6,825.00
Total Fees	= \$ 7,325.00
<u>Less payments</u>	= \$ 1,860.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,465.00


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

ARBITRATION PANEL

Arthur D. Sporn, Esq.	-	Public Arbitrator, Presiding Chair
Roy L. Weiss, Esq.	-	Public Arbitrator
Farrell C. Glasser, 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.


Arthur D. Sporn, Esq.
Public Arbitrator, Presiding Chair

12/17/01
Signature Date

Roy L. Weiss, Esq.
Public Arbitrator

Signature Date

Farrell C. Glasser, Esq.
Industry Arbitrator

Signature Date

January 4, 2002
Date of Service (For NASD office use only)

ARBITRATION PANEL

Arthur D. Sporn, Esq.	-	Public Arbitrator, Presiding Chair
Roy L. Weiss, Esq.	-	Public Arbitrator
Farrell C. Glasser, Esq.	-	Industry Arbitrator

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Arthur D. Sporn, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Roy L. Weiss, Esq.
Public Arbitrator

12 / 18 / 01

Signature Date

Farrell C. Glasser, Esq.
Industry Arbitrator

Signature Date

January 4, 2002
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Roy L. Weiss, Esq.	-	Public Arbitrator
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Arthur D. Sporn, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Roy L. Weiss, Esq.
Public Arbitrator

Signature Date


Farrell C. Glasser, Esq.
Industry Arbitrator

12/15/01
Signature Date

January 4, 2002
Date of Service (For NASD office use only)