

COPY

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between: R. Karen Hatch and Dwaine Hatch and their marital community, and Ina Virginia Richards, Claimants, v. Southern Financial Group, Inc., and Jeff Jenovese, Respondents.

Case Number: 01-01553

Hearing Site: Seattle, Washington

REPRESENTATION OF PARTIES

For Claimants:

Ms. Marianne K. Jones
Jones Law Group PLLC
2300 130th Avenue N.E.
Suite A-103
Bellevue, WA 98005

For Respondents:

Mr. Russell L. Forkey, P.A.
Russell L. Forkey, P.A.
2888 East Oakland Park Blvd.
Ft. Lauderdale, FL 33306

CASE INFORMATION

Statement of Claim filed: March 22, 2001.

Claimants' Uniform Submission Agreements signed: May 3, 2001.

Joint Statement of Answer filed by Respondents: July 17, 2001

CASE SUMMARY

Claimants alleged that respondents engaged in unauthorized trades in certain of claimants' accounts, charged commissions in excess of an alleged oral agreement that all trades would be charged a \$75 per trade commission, and negligently failed to execute one trade per claimants' instructions in the account of claimant Ina Virginia Richards.

Respondents denied all of the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

RELIEF REQUESTED

Claimants requested an Award of \$32,005.30 in damages on their claims, plus \$4,870.62 in pre-Award interest, and \$46,510.09 for their attorneys' fees and costs.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, and also a panel recommendation of expungement of all references to this arbitration from Respondents Jeff Jenovese's and Southern Financial Group, Inc.'s registration records maintained by the NASD CRD.

OTHER ISSUES CONSIDERED AND DECIDED

Claimants' initial Statement of Claim alleged claims against respondent Dain Rauscher Inc., d/b/a RPR Correspondent Clearing. This respondent was dismissed from this case by the Claimants prior to the arbitration hearing and, accordingly, did not appear or participate at the hearing.

Upon review of the file and the representations made by and on behalf of the Claimants, the undersigned Panel determined that Respondent Jeff Jenovese was properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent being present, in accordance with the NASD Code of Arbitration Procedure, (the "Code"), on February 4, 2002. Mr. Jenovese's counsel was present on said date, and stipulated that Respondent Jenovese had received due prior notice of the hearing date and location. Mr. Jenovese did attend the remainder of the hearing.

Respondents Jeff Jenovese and Southern Financial Group, Inc. did not file with the NASD Dispute Resolution, Inc. properly executed submission agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Arbitration Panel on all issues submitted.

The parties agreed that the Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, testimony, and evidence presented at the hearing, and certain post-hearing submissions of the parties concerning applicable legal authorities, the Arbitration Panel decided in full and final resolution of the issues submitted for determination as follows:

1) All claims asserted by Claimants in this arbitration are denied and are hereby dismissed with prejudice. The Arbitration Panel's principal reasons for this decision are as follows:

This case was a credibility contest. Claimants' principal witness, Mrs. Hatch, testified that respondents placed a number of trades in respondents' various accounts that were not authorized, failed to honor an oral agreement limiting all commissions to \$75 per trade, and negligently failed to execute one trade pursuant to her instructions in the account of claimant Ina Virginia Richards. Respondents' principal witness, Mr. Jeff Jenovese, testified that all of the challenged trades were authorized by Mrs. Hatch in telephone conversations with him, that there was no oral agreement limiting commissions to \$75 per trade, and that he was never instructed to make the trade in Mrs. Richards' account of which Claimants complain.

Based on all of the evidence presented, the panel concluded that Claimants failed to carry their burden of proving their claims by a preponderance of the evidence.

On the unauthorized trading claim, the panel was troubled by several aspects of Claimants' account of what happened, and in particular by the implausibility of Mrs. Hatch's testimony that she learned of several large unauthorized trades by Mr. Jenovese at the inception of her working relationship with him in December 1999 but did nothing about these trades except accept his assurance that he would have them corrected. The panel felt that anyone in such circumstances would have raised the matter with the branch manager or refused to continue working with the broker or demanded to see written confirmation that the mistakes had been corrected, or all of the above. The panel also believed it very unlikely that a broker would risk his career by making a large unauthorized trade (in the amount of \$29,065.00) in order to earn a \$64.67 commission (the commission paid on the first unauthorized trade, made on December 6, 1999, alleged by Claimants), only a fraction of which would be paid to him, and then do it again and again after allegedly being called on it the first time.

The panel was also troubled by various aspects of Respondents' evidence. In particular, the panel did not believe that Respondents gave persuasive evidence describing respondent Southern Financial's actual order-taking practices, and many of the statements made by Mr. Jenovese were either contradicted or not confirmed by the other evidence presented. In particular, Mr. Jenovese's testimony that he took the challenged orders on the day of each trade and made Mrs. Hatch work through a "tabbed screen" of detailed customer instructions with him in order to confirm each such trade was not supported by the telephone records presented or other documentary evidence presented by respondents, either as to some of the challenged trades or as to some of the concededly authorized trades. In general, the panel did not find Mr. Jenovese to be a credible witness as to certain aspects of his testimony.

On balance, the diametrically conflicting evidence presented at the hearing raised substantial questions about Respondents' conduct but did not permit the Panel to conclude that Claimants

had proved their unauthorized trading claim by a preponderance of the evidence. The evidence presented on the commission claim and the negligent failure to execute claim was less extensive but similarly inconclusive. On these claims as well, the evidence presented did not prove Claimants' claims by a preponderance of the evidence.

2) Each party shall bear its own costs, including attorney's fees.

3) All other relief not expressly granted is denied. In particular, the Arbitration Panel finds the questions raised here sufficiently serious, and the conflicting evidence sufficiently troublesome, that it expressly declines to enter the expungement recommendation requested by Respondents.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 175.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firms Dain Rauscher and Southern Financial Group are parties and the following fees are assessed:

Dain Rauscher:

Member Surcharge	= \$ 800.00
<u>Pre-Hearing Process Fee</u>	= \$ 600.00
Total Member Fees	= \$1,400.00

Southern Financial Group:

Member Surcharge	= \$ 800.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$1,000.00
Total Member Fees	= \$2,400.00

Adjournment Fees

The following adjournment fees are assessed:

No adjournment fees were incurred in this matter.

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(1) Pre-hearing conference session with a single arbitrator @ \$ 450.00/session = \$ 450.00
Pre-hearing conference: January 17, 2002 1 session

(1) Pre-hearing conference session with the Panel @ \$600.00/session = \$ 600.00
Pre-hearing conference: December 18, 2001 1 session

(8) Hearing sessions @ \$600.00/session = \$4,800.00
Hearings: February 4, 2002 2 sessions
February 5, 2002 2 sessions
February 6, 2002 2 sessions
February 7, 2002 2 sessions

Total Forum Fees = \$ 5,850.00

1. The Panel assessed \$ 2,925.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$ 2,925.00 of the forum fees jointly and severally to Respondents Southern Financial Group and Jeff Jenovese.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

No additional administrative costs were incurred in this matter.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= \$ 2,925.00
Total Fees	= \$ 3,100.00
<u>Less Payments</u>	= \$(2,025.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,075.00

2. Respondent, Dain Rauscher, is charged with the following fees and costs:

Member Fees	= \$ 1,400.00
<u>Less Payments</u>	<u>= \$(1,400.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

3. Respondent, Southern Financial Group, is charged with the following fees and costs:

Member Fees	= \$ 2,400.00
<u>Less Payments</u>	<u>= \$ (1,400.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,000.00

4. Respondents, Southern Financial Group and Jeff Jenovese, are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 2,925.00
<u>Less Payments</u>	<u>= \$ (0.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,925.00

All balances are payable to NASD Dispute Resolution, Inc. and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

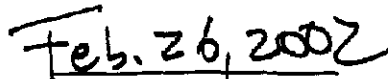
ARBITRATION PANEL

Thomas J. Brewer	-	Public Arbitrator, Presiding Chair
Daniel P. Harris	-	Public Arbitrator
Robert Pillitteri	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



THOMAS J. BREWER
Chair, Public Arbitrator



Signature Date

DANIEL P HARRIS
Public Arbitrator

Signature Date

ROBERT PILLITTERI
Industry/Non-Public Arbitrator

Signature Date



Date of Service

Concurring Arbitrators' Signatures

THOMAS J. BREWER
Chair, Public Arbitrator



DANIEL P HARRIS
Public Arbitrator

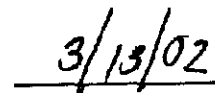
Signature Date



Signature Date

ROBERT PILLITTERI
Industry/Non-Public Arbitrator

Signature Date



Date of Service

Concurring Arbitrators' Signatures



THOMAS J. BREWER
Chair, Public Arbitrator

Feb. 26, 2002

Signature Date

DANIEL P HARRIS
Public Arbitrator

Signature Date



ROBERT PILLITTERI
Industry/Non-Public Arbitrator

MAR 3, 2002

Signature Date

3/13/02

Date of Service