

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Name of Claimant

Case No. 01-01581

Powell Fisher

Names of Respondents

Wheat, First Securities, Inc.
William H. Rogers

Hearing Site: Charlotte, North Carolina

REPRESENTATION OF PARTIES

For Powell Fisher, hereinafter referred to as "Claimant": Reynolds Williams, Esq. and Mark Buyck, Esq., Wilcox, Buyck & Williams, P.A., Florence, South Carolina.

For Wheat, First Securities, Inc. ("Wheat") and William H. Rogers ("Rogers"), hereinafter collectively referred to as "Respondents": Cameron S. Matheson, Esq. and Ricardo J. Nunez, Esq., LeClair Ryan, P.A., Richmond, Virginia.

CASE INFORMATION

Statement of Claim filed on or about: March 23, 2001.

Claimant signed the Uniform Submission Agreement on: March 20, 2001.

Statement of Answer, Motion to Dismiss and Counterclaim filed by Respondent Wheat on or about: June 14, 2001.

Statement of Answer and Motion to Dismiss filed by Respondent Rogers on or about: June 14, 2001.

Respondent Wheat signed the Uniform Submission Agreement on: July 16, 2001.

Respondent Rogers signed the Uniform Submission Agreement on: June 14, 2001.

Reply to Counterclaim filed by Claimant on or about: July 31, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: 1) breach of employment contract; 2) violation of the South Carolina Payment of Wage Statutes; and 3) violation of the South Carolina Unfair Trade Practices Act. The causes of action relate to Respondents' failure to pay profit bonuses, profit overrides and wages owed to Claimant.

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 the doctrine of waiver; 3) Claimant's claims are barred by the doctrine of estoppel; and 4) Respondents acted properly and in good faith with regard to Claimant.

Respondent Wheat asserted the following causes of action in its counterclaim: 1) breach of contract for promissory note dated March 17, 1999 and compensation agreement dated March 14, 1999; 2) breach of contract for brokerage account by failing to pay an account deficit; and 3) breach of contract for personal use of corporate credit card by failing to reimburse personal expenses charged to corporate credit card.

Unless specifically admitted in his Answer, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: 1) Respondent Wheat's bad faith breach of the employment contract frustrated Claimant's ability to perform, thus voiding Claimant's obligations, if any; 2) Claimant is entitled to a set-off; 3) the undersigned arbitrators (the "Panel") does not have jurisdiction over the counterclaim; 4) Respondent Wheat is not entitled to the payment of its attorneys' fees because there is no contractual agreement for Claimant to pay attorneys' fees, there is no statute which provides for such payment, and there is no rule of law authorizing such payment under the circumstances described in the Statement of Claim, Answer and Counterclaim; and 5) the deficit, if any, in Claimant's brokerage account with Respondent Wheat is not due to any action of Claimant.

RELIEF REQUESTED

Claimant requested in his Statement of Claim: 1) compensatory damages in the amount of \$650,000.00; 2) punitive/treble damages in the amount of \$1,300,000.00; 3) costs; and 4) attorneys' fees. At the evidentiary hearing, Claimant requested: 1) compensatory damages in the amount of \$675,000.00 for breach of contract; 2) compensatory damages in the amount of \$11,000.00 for failure to pay wages; 3) treble damages for failure to pay wages under the South Carolina Payment of Wages Act; 4) punitive damages in the amount of \$2,700,000.00 for breach of contract accompanied by a fraudulent act; 5) compensatory damages in the amount of \$675,000.00 for violation of the South Carolina Unfair Trade Practices Act; 6) treble damages for violation of the South Carolina Unfair Trade Practices Act; 7) punitive damages for violation of the South Carolina Unfair Trade Practices Act; 8) costs in the amount of \$19,000.00; and 9) attorneys' fees in the amount of \$22,143.65 for violation of the South Carolina Unfair Trade Practices Act.

Respondents requested dismissal of the Statement of Claim.

Respondent Wheat requested in its Counterclaim, as amended: 1) compensatory damages in the amount of \$608,806.40 for breach of contract for promissory note and compensation agreement; to wit: the unforgiven principal balance of the loan; 2) interest on the unforgiven loan balance in the amount of \$48,615.27 through the date of hearing, December 11, 2001, plus additional accrued interest of \$76.56 per day until the loan is paid in full; 3) compensatory damages in the amount of \$17,344.91 for overdraft payments; 4) interest on the overdraft payments; 5) compensatory damages in the amount of \$12,000.00 for an unpaid account deficit; 6) interest on the unpaid account deficit; 7) compensatory damages in the amount of \$5,079.85 for unreimbursed expenses on the corporate credit card; 8) costs; 9) attorneys' fees; and 10) such other relief the Panel deemed just and proper. At the evidentiary hearing, Respondent requested attorneys' fees in the amount of \$89,253.61 and costs in the amount of \$4,450.00.

Claimant requested dismissal of the Counterclaim.

OTHER ISSUES CONSIDERED AND DECIDED

On or about November 26, 2001, Respondents filed their Motion for Leave to Amend the Answer and Counterclaim. On or about December 3, 2001, the Panel granted Respondents' motion.

On or about December 5, 2001, Respondents filed their Motion to Exclude Claimant's Evidence. On or about December 7, 2001, Claimant filed his Response in opposition to Respondents' motion. At the evidentiary hearing, the Panel granted in part and denied in part Respondents' motion.

At the evidentiary hearing, Claimant moved to amend the Statement of Claim wherein Claimant requested leave to seek attorneys' fees in the amount of \$22,143.65 and costs in the amount of \$19,000.00. The Panel granted Claimant's motion to amend.

At the evidentiary hearing, Respondent Wheat moved to amend its Counterclaim wherein Respondent Wheat requested leave to seek attorneys' fees in the amount of \$89,253.61 and costs in the amount of \$4,450.00. The Panel granted Respondent Wheat's motion.

At the evidentiary hearing, Claimant moved to dismiss Respondent Wheat's counterclaim of breach of promissory note for lack of jurisdiction. The Panel denied the motion.

At the evidentiary hearing, Respondents moved to dismiss the Statement of Claim at the conclusion of Claimant's presentation of his case-in-chief. The Panel denied the motion.

At the evidentiary hearing, Claimant moved to dismiss the Counterclaim at the conclusion of Respondents' presentation of their case-in-chief. The Panel denied the motion.

The parties agreed that the Award 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 (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted by Claimant are denied.
2. Claimant's requests for attorneys' fees, punitive damages, and treble damages are denied.
3. Claimant is liable and shall pay to Respondent Wheat compensatory damages in the amount of \$608,806.40 for the unforgiven principal balance of the loan, plus interest in the amount of \$36,896.48 through December 11, 2001 and per diem interest in the amount of \$76.56 from December 12, 2001 through the date of service of the Award. Post-judgment interest shall accrue in accordance with Rule 10330(h) of the NASD Code of Arbitration Procedure (the "Code").
4. Claimant is liable and shall pay to Respondent Wheat compensatory damages in the amount of \$17,344.91 for overdraft payments. Post-judgment interest shall accrue in accordance with Rule 10330(h) of the Code.
5. Claimant is liable and shall pay to Respondent Wheat attorneys' fees in the amount of \$89,253.61. Attorneys' fees are awarded pursuant to the promissory note.
6. Any and all relief not specifically addressed herein 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	= \$ 500.00
Counterclaim filing fee	= \$1,250.00

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 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:

There were no adjournments requested during these proceedings.

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 a single arbitrator x \$450.00	\$ 450.00
Pre-hearing conference: November 7, 2001 1 session	
One (1) Pre-hearing session with Panel x \$1,200.00	= \$1,200.00
Pre-hearing conference: August 27, 2001 1 session	
Six (6) Hearing sessions x \$1,200.00	= \$7,200.00
Hearing Dates: December 11, 2001 2 sessions	
December 12, 2001 2 sessions	
December 13, 2001 2 sessions	
Total Forum Fees	= \$8,850.00

The Panel has assessed \$4,425.00 of the forum fees to Claimant.

The Panel has assessed \$4,425.00 of the forum fees 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:

Claim Filing Fee	= \$ 500.00
Forum Fees	= \$4,425.00

Total Fees	= \$4,925.00
Less payments	= \$1,700.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,225.00

Respondent Wheat be and hereby is solely liable for:

Counterclaim Filing Fee	= \$1,250.00
Member Fees	= \$7,600.00

Total Fees	= \$8,850.00
Less payments	= \$8,850.00
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

Respondents be and hereby are jointly and severally liable for:

Forum Fees	= \$4,425.00
------------	--------------

Total Fees	= \$4,425.00
Less payments	= \$1,200.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,225.00

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

Clarence C. Guy	Public Arbitrator, Presiding Chair
Louis M. Davis	Non-Public Arbitrator
Joe Carroll Thomas, M.S.	Public Arbitrator

Concurring Arbitrators' Signatures

<u>/s/</u>	
Clarence C. Guy	Signature
Public Arbitrator, Presiding Chair	Date

<u>/s/</u>	
Louis M. Davis	Signature
Non-Public Arbitrator	Date

<u>/s/</u>	
Joe Carroll Thomas, M.S.	Signature
Public Arbitrator	Date

January 23, 2002
Date of Service (For NASD-Dispute Resolution office use only)

Total Fees	= \$4,925.00
Less payments	= \$1,700.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,225.00

Respondent Wheat be and hereby is solely liable for:

Counterclaim Filing Fee	= \$1,250.00
Member Fees	= \$7,600.00

Total Fees	= \$8,850.00
Less payments	= \$8,850.00
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

Respondents be and hereby are jointly and severally liable for:

Forum Fees	= \$4,425.00
------------	--------------

Total Fees	= \$4,425.00
Less payments	= \$1,200.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,225.00

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

Clarence C. Guy
Louis M. Davis
Joe Carroll Thomas, M.S.

Public Arbitrator, Presiding Chair
Non-Public Arbitrator
Public Arbitrator

Concurring Arbitrators' Signatures

Clarence C. Guy
Clarence C. Guy
Public Arbitrator, Presiding Chair

01-22-02
Signature Date

Louis M. Davis
Louis M. Davis
Non-Public Arbitrator

Signature Date

Joe Carroll Thomas, M.S.
Joe Carroll Thomas, M.S.
Public Arbitrator

Signature Date

Date of Service (For NASD-Dispute Resolution office use only)

Total Fees	= \$4,925.00
<u>Less payments</u>	<u>= \$1,700.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,225.00

Respondent Wheat be and hereby is solely liable for:

Counterclaim Filing Fee	= \$1,250.00
Member Fees	= \$7,600.00

Total Fees	= \$8,850.00
<u>Less payments</u>	<u>= \$8,850.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

Respondents be and hereby are jointly and severally liable for:

Forum Fees	= \$4,425.00
------------	--------------

Total Fees	= \$4,425.00
<u>Less payments</u>	<u>= \$1,200.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,225.00

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

Clarence C. Guy
Louis M. Davis
Joe Carroll Thomas, M.S.

Public Arbitrator, Presiding Chair
Non-Public Arbitrator
Public Arbitrator

Concurring Arbitrators' Signatures

Clarence C. Guy
Public Arbitrator, Presiding Chair

Signature Date


Louis M. Davis
Non-Public Arbitrator

1-28-02

Signature Date

Joe Carroll Thomas, M.S.
Public Arbitrator

Signature Date

Date of Service (For NASD-Dispute Resolution office use only)

Total Fees	= \$4,925.00
Less payments	= \$1,700.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,225.00

Respondent Wheat be and hereby is solely liable for:

Counterclaim Filing Fee	= \$1,250.00
Member Fees	= \$7,600.00

Total Fees	= \$8,850.00
Less payments	= \$8,850.00
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

Respondents be and hereby are jointly and severally liable for:

Forum Fees	= \$4,425.00
------------	--------------

Total Fees	= \$4,425.00
Less payments	= \$1,200.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,225.00

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

Clarence C. Guy
Louis M. Davis
Joe Carroll Thomas, M.S.

Public Arbitrator, Presiding Chair
Non-Public Arbitrator
Public Arbitrator

Concurring Arbitrators' Signatures

Clarence C. Guy
Public Arbitrator, Presiding Chair

Signature Date

Louis M. Davis
Non-Public Arbitrator

Signature Date


Joe Carroll Thomas, M.S.
Public Arbitrator

1/19/02
Signature Date

Date of Service (For NASD-Dispute Resolution office use only)