

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Electronic Trading Group, LLC, Claimant v. Andover Brokerage, L.L.C., Spectrum Capital Partners, Jeffrey P. Gradinger, Matthew A. White, Jason M. Saxon, Frank L. Hernandez, Jr. and Rakesh K. Patel, Respondents

Case Number: 01-04211

Hearing Site: San Francisco, California

Nature of the Dispute: Member v. Member, Non-Member and Associated Persons

REPRESENTATION OF PARTIES

For Claimant:

Linda Q. Foy
Howard, Rice, Nemerovski,
Canady, Falk & Rabkin
San Francisco, California

For Respondents:

Kenneth I. Schacter
Bingham McCutchen LLP
New York, New York

CASE INFORMATION

Statement of Claim filed: August 7, 2001

Claimant Electronic Trading Group, LLC's ("ETG") Uniform Submission Agreement signed: August 3, 2001

Joint Statement of Answer of Respondents Andover Brokerage, L.L.C. ("Andover"), Spectrum Capital Partners ("Spectrum"), Jeffrey P. Gradinger, Matthew A. White, Jason M. Saxon, Frank L. Hernandez, Jr. and Rakesh K. Patel filed: October 30, 2001

Respondents' Opposition to Claimant's Request for an Immediate Injunctive Order filed: September 28, 2001

CASE SUMMARY

Claimant alleged that it suffered damages because of Respondents' tortuous interference with ETG employment and business relations. Claimant also alleged that Respondents breached their contractual relationship with ETG.

Respondents denied Claimant's allegations of wrongdoing, denied any liability to Claimant and also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested:

1. Damages in the amount of \$800,000.00;
2. All remedies available by law and to equitable relief, including injunctive relief;
3. Respondent Jason M. Saxon's money damages in the amount of \$50,000.00;
4. Outstanding loan amounts for Respondents, Matthew A. White and Rakesh K. Patel, for \$9,733.04 and \$15,814.94 respectively, including interests and costs; and
5. Punitive damages in the amount of \$2,000,000.00.

Respondents requested dismissal of Claimant's claims and requested costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Andover, Spectrum, Jeffrey P. Gradinger, Matthew A. White, Jason M. Saxon, Frank L. Hernandez, Jr. and Rakesh K. Patel did not file with NASD Dispute Resolution ("NASD-DR") properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("Code") and, having answered Claimant's Claim, are bound by the determination of the Panel on all issues submitted.

On or about October 1, 2001, the Panel reviewed and considered the positions of the parties relative to Claimant's request for injunctive relief. The Panel denied Claimant's request.

The Panel agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

FINDINGS

After reviewing the pleadings and lack of response by Claimant to the Order issued on or about October 2, 2006, the Panel has dismissed Claimant's claims with prejudice.

AWARD

After considering the pleadings and lack of response by Claimant to the Order issued on or about October 2, 2006, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed with prejudice as a result of Claimant's failure to prosecute its claims.
2. Each party shall bear its own costs, including attorney's fees.
3. All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

| | |
|--------------------------|--------------|
| Initial claim filing fee | = \$2,000.00 |
|--------------------------|--------------|

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 that gave rise to the dispute, claim, or controversy. Accordingly, ETG and Andover are parties and the following fees are assessed:

ETG

| | |
|--------------------------|---------------------|
| Member Surcharge | = \$2,500.00 |
| Pre-Hearing Process Fee | = \$ 600.00 |
| Hearing Process Fee | = \$4,500.00 |
| Total Member Fees | = \$7,600.00 |

Andover

| | |
|--------------------------|---------------------|
| Member Surcharge | = \$2,500.00 |
| Pre-Hearing Process Fee | = \$ 600.00 |
| Hearing Process Fee | = \$4,500.00 |
| Total Member Fees | = \$7,600.00 |

Adjournment Fees

The following adjournment fees are assessed:

The Panel granted the parties' request to postpone the June 3-7, 2002, hearing dates and waived the \$1,200.00 postponement fee.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in accordance with Rules 10205 and 10335 of the Code.

The injunctive relief fees are assessed as follows:

1. Member firm ETG is assessed:
Injunctive relief surcharge = \$2,500.00

Forum Fees and Assessments

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

| | | | |
|--|--------------------|-----------|------------|
| Two (2) Injunctive hearing sessions with a single arbitrator | | | |
| @ \$450.00/session | | | = \$900.00 |
| Injunctive Hearings: | September 24, 2001 | 1 session | |
| | October 1, 2001 | 1 session | |

| | | | |
|---|------------------|-----------|--------------|
| (1) Pre-hearing conference session with the Panel | | | |
| @ \$1,200.00/session | | | = \$1,200.00 |
| Pre-hearing conference: | January 14, 2002 | 1 session | |

| | | | |
|-------------------------|--|--|---------------------|
| Total Forum Fees | | | = \$2,100.00 |
|-------------------------|--|--|---------------------|

The Panel assessed \$825.00 in forum fees to Claimant ETG.

The Panel assessed \$825.00 in forum fees jointly and severally to Respondents Andover, Spectrum, Jeffrey P. Grading, Matthew A. White, Jason M. Saxon, Frank L. Hernandez, Jr. and Rakesh K. Patel.

The Panel waived the \$450.00 forum fee in connection with the injunctive hearing held September 24, 2001.

Fee Summary

1. Claimant ETG is charged with the following fees and costs:

| | |
|----------------------------|----------------------|
| Initial Filing Fee | = \$ 2,000.00 |
| Member Fees | = \$ 7,600.00 |
| Injunctive Relief Fees | = \$ 2,500.00 |
| Forum Fees | = \$ 825.00 |
| Total Fees | = \$ 12,925.00 |
| Less Payments | = \$(13,300.00) |
| Refund Due Claimant | = \$(375.00) |

2. Respondent Andover is charged with the following fees and costs:

| | |
|----------------------------|------------------|
| Member Fees | = \$ 7,600.00 |
| Less Payments | = \$(7,600.00) |
| Balance Due NASD-DR | = \$ 0.00 |

3. Respondents Andover, Spectrum, Jeffrey P. Grading, Matthew A. White, Jason M. Saxon, Frank L. Hernandez, Jr. and Rakesh K. Patel are charged jointly and severally with the following fees and costs:

| | |
|---------------------------|------------------------|
| Forum Fees | = \$ 825.00 |
| Less Payments by Andover | = \$(3,600.00) |
| Refund Due Andover | = \$(2,775.00) |

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

ARBITRATION PANEL

| | | |
|------------------------|---|------------------------------------|
| Helen B. Culiner, Esq. | - | Public Arbitrator, Presiding Chair |
| Bruce W. Belding | - | Public Arbitrator |
| Eric G. Vallis | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Helen B. Culiner
Helen B. Culiner, Esq.
Chair, Public Arbitrator

12/2/06
Signature Date

Bruce W. Belding
Bruce W. Belding
Public Arbitrator

Signature Date

Eric G. Vallis
Eric G. Vallis
Non-Public Arbitrator

Signature Date


12/6/06
Date of Service

ARBITRATION PANEL

| | | |
|-----------------------|---|------------------------------------|
| Helen B. Culner, Esq. | - | Public Arbitrator, Presiding Chair |
| Bruce W. Belding | - | Public Arbitrator |
| Eric G. Wallis | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Helen B. Culner, Esq.
Chair, Public Arbitrator



Bruce W. Belding
Public Arbitrator

Signature Date

Dec. 3, 2006
Signature Date

Eric G. Wallis
Non-Public Arbitrator

Signature Date

12/06/06
Date of Service

ARBITRATION PANEL

| | | |
|------------------------|---|------------------------------------|
| Helen B. Culiner, Esq. | - | Public Arbitrator, Presiding Chair |
| Bruce W. Belding | - | Public Arbitrator |
| Eric G. Wallis | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Helen B. Culiner, Esq.
Chair, Public Arbitrator

Signature Date

Bruce W. Belding
Public Arbitrator

Signature Date



Eric G. Wallis
Non-Public Arbitrator

Signature Date

12/5/06

12/6/06
Date of Service