

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant/Counter-Respondent
World Choice Securities, Inc.

Case Number: 02-05406

Name of the Respondents/ Counter-Claimant/
Third-Party Claimants
Butler Freeman Tally Financial Group, L.L.C.;
Wilda J. Berry; and,
Kenneth C. Boothe

Hearing Site: Dallas, Texas

Third-Party Respondent
William Ross Morris, III

NATURE OF DISPUTE

Member Firm v. Member Firm and Associated Persons v. Associated Person

REPRESENTATION OF PARTIES

Claimant/Counter-Respondent World Choice Securities, Inc. ("World Choice"), hereinafter referred to as "Claimant": Michael E. Fox, Esq., located in Flower Mound, Texas.

Respondents/Counter-Claimants/Third-Party Claimants Butler Freeman Tally Financial Group L.L.C. ("BFT"), Wilda J. Berry ("Berry") and Kenneth C. Boothe ("Boothe"), hereinafter collectively referred to as "Respondents": Rachel R. Hranitzky, Esq. of the firm of Hiersche, Hayward, Drakeley & Urbach, PC, located in Addison, Texas.

Third-Party Respondent William Ross Morris, III ("Morris") was represented by: Michael E. Fox, Esq., located in Flower Mound, Texas.

CASE INFORMATION

Statement of Claim filed: September 11, 2002.

Claimant signed the Uniform Submission Agreement: September 6, 2002.

Claimant's Response to Respondents' Counterclaim and Third -Party Claim and Claimant's Special Exceptions filed: January 27, 2003.

Claimant's First Amended Statement of Claim filed on or about: September 24, 2002.
Claimant's Second Amendment to Statement of Claim filed: April 8, 2003.

Statement of Answer, Counterclaim and Third-Party Claim filed by Respondents BFT, Berry and Boothe: November 7, 2002.

Respondent BFT signed the Uniform Submission Agreement: October 28, 2002.

Respondent Berry signed the Uniform Submission Agreement: October 28, 2002.

Respondent Boothe signed the Uniform Submission Agreement: October 28, 2002.

Respondent's Motion for Entry of Default Judgment filed: January 16, 2003.

Claimant and Third-Party Respondent's Response to Motion for Default Judgment: January 27, 2003.

Statement of Answer and Special Exceptions filed by Third-Party Respondent Morris on: January 27, 2003

Third-Party Respondent Morris signed the Uniform Submission Agreement: April 8, 2003.

Claimant's and Third-Party Respondent's No-Evidence Motion for Summary Judgment filed: June 18, 2003.

Response to Claimant's and Third-Party Respondent's No-Evidence Motion for Summary Judgment filed by Respondents BFT, Berry and Boothe on: August 18, 2003.

Trial Brief filed by Respondents BFT, Berry and Boothe on: February 20, 2004.

Claimant's Requested Brief in Support of Breach of Contract filed: February 17, 2004.

CASE SUMMARY

In the initial Statement of Claim, Claimant asserted the following causes of action:

1. Against Respondent Berry – Breach of employment contract; breach of fiduciary duty; theft and use of company proprietary information; tortuous interference with contractual business relationships; and interfering with the statutory duties to supervise and administer to registered representatives;
2. Against Respondent BFT – breach of contract; tortuous interference with contractual business relationships, theft and use of proprietary information; and interfering with statutory duties to supervise and administer to registered representatives; and,
3. Against Respondent Boothe – breach of contract and use of proprietary information.

The causes of action relate to Boothe's and Berry's resignation from Claimant and subsequent employment at Respondent BFT.

In Claimant's First Amended Claim, World Choice alleged that BFT had authorized the block transfer of World Choice business by the use of the forged signature of Morris.

In addition, Claimant asserted further causes of action in the Second Amended Claim against Boothe for tortious interference with existing contracts as well as intentional infliction of emotional distress. Claimant alleged that Boothe directed certain of Claimant's clients to complain of the products he sold to them while at World Choice Securities as well as many products that were not purchased through the World Choice Broker Dealer.

Unless specifically admitted in their Answer, Respondents BFT, Berry and Boothe denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant's claim fails to state a claim upon which relief can be granted;
2. At all times and in all matters relevant to the allegations contained in the Claim, Respondents acted in good faith without the intent to deceive or defraud Claimant;
3. Claimant's claims are barred, in whole or in part, by the doctrine of set-off or offset;
4. Claimant's claims are barred, in whole or in part, by the doctrine of waiver and/or estoppel;
5. Claimant's claims are barred, in whole or in part, by the doctrine of ratification;
6. Claimant's claims are barred, in whole or in part, by the failure of consideration;
7. Claimant's claims are barred, in whole or in part, by way of duress;
8. Claimant's claims are barred, in whole or in part, by the fact that there is no valid contract between BFT and World Choice;
9. Claimant's claims are barred, in whole or in part, by way of the fact that the business relationships involved are of a different nature and unrelated; and,
10. Claimant's claims are barred, in whole or in part, by way of illegality.

In addition, Respondents asserted a Counterclaim against World Choice and a Third-Party Claim against Morris for common law fraud and breach of contract. These causes of action related to the failure of World Choice and Morris to purchase errors and omissions insurance for any claims relating to discretionary trading activities as promised in their employment agreements.

Unless specifically admitted in their Answer, World Choice and Morris denied the allegations made in the Counterclaim/Third-Party Claim and asserted that there was no basis for the claims made by the Respondents.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$189,827.00 for loss of revenue and reimbursement of expenses
Punitive Damages	\$250,000.00
Interest	Estimated at one year at 10% or \$18,982.70

Attorneys' Fees	Estimated to be no less than \$12,000.00
Other Costs	Witness and production fees, as well as filing and hearing fees of no less than \$9,975.00
Other Monetary/Non-Monetary Relief if any:	Other case related expenses of no less than \$1,000.00.

Claimant's First Amended Claim increased the damage request to \$219,827.00 for compensatory damages and \$500,000.00 for punitive damages. The punitive damage request was later reduced to \$250,000.00.

Claimant's Second Amended Claim requested restitution for damage to reputation as well as the imminent financial losses that would occur based upon the Customer complaints.

Respondents BFT, Berry and Boothe requested that an award be entered dismissing World Choice's Claims in their entirety and awarding them their attorney's fees, expenses and costs incurred in defending this claim. In addition, Respondents BFT, Berry and Boothe requested the following damages in their Counterclaim/Third-Party Claim:

Compensatory Damages	As determined by the Panel
Punitive/Treble Damages	As determined by the Panel
Interest	Pre-judgment and post-judgment interest at the highest legal rate allowed by law
Attorneys' Fees	Reasonable fees
Other Costs	Including expert witness fees and cost of forum fees
Other Monetary/Non-Monetary Relief if any:	Indemnification of Respondents by World Choice and Morris for any that arise due to their failure to provide insurance coverage pursuant to agreement.

World Choice and Morris requested that the panel find insufficient basis for an award to Respondents, that Morris is determined to be an unnecessary party to this arbitration, for reasonable attorneys' fees, costs and other relief that World Choice and Morris showed themselves entitled to.

OTHER ISSUES CONSIDERED AND DECIDED

On April 23, 2003, the Panel denied Respondents' and Third-Party Claimant's Motion for Entry of Default Judgment to include the alternative request of barring the Claimant and Third Party Respondent from presenting evidence, arguments or defense. In addition, the Panel consented to the filing of Claimant's Amended Statement of Claim.

On September 26, 2003, the Panel denied the Claimant's and Third-Party Respondent's No-Evidence Motion for Summary Judgment.

At hearing, Claimant amended its claim to allege conspiracy which extends the liability for the purpose of Claimant's action in tortious interference to the conspirators who may have planned, assisted or encouraged the wrongful acts.

At hearing, Respondents amended their damage claims by withdrawing the request for punitive damages for misrepresentation. Instead, they requested punitive damages for the slanderous and defamatory statements made at the hearing.

At hearing, all parties presented Motions for Directed Verdict. After consideration of the arguments made by the respective parties, the Panel denied the Motions.

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. Respondent Wilda J. Berry is liable for and shall pay to the Claimant, World Choice Securities, Inc. the sum of \$10.00 as compensatory damages for her breach of contract;
2. In addition, Respondent Butler Freeman Tally Financial Group, L.L.C. is liable for and shall pay to the Claimant, World Choice Securities, Inc. the sum of \$1,200.00 as compensatory damages for its unauthorized use of Claimant's manual;
3. Furthermore, Respondent Butler Freeman Tally Financial Group, L.L.C. is liable for and shall pay to the Claimant, World Choice Securities, Inc. the sum of \$50,000.00 for its tortious interference with Claimant's business (a) by someone in its offices submitting a falsified signature on a Block Transfer; (b) by orchestrated customer complaint letters against World Choice and Morris being sent to regulatory authorities (at a minimum by negligently failing to supervise Boothe); and (c) by such complaint letters causing a loss (or delay) in a business opportunity to sell to a third party a major shareholder position in World Choice Securities Inc.;
4. Respondent Kenneth C. Boothe is liable for and shall pay to the Claimant, World Choice Securities, Inc. the sum of \$50,000.00 for his breach of contract and for his tortious interference with Claimant's business by orchestrating the filing of customer complaint letters against World Choice and Morris, and by such complaint letters causing a loss (or delay) in a business opportunity to sell to a third party a major shareholder position in World Choice Securities Inc.;
5. Respondents Butler Freeman Tally Financial Group, L.L.C. and Kenneth C. Boothe are jointly and severally liable for and shall pay to the Claimant, World Choice Securities, Inc., the sum of \$18,000.00 in attorneys' fees. In deciding to award

attorneys' fees, the Panel considered the arguments and pleadings presented by the parties, as well as *Nationwide Mutual Ins. Co. v. Holmes*, 842 SW 2nd 335, 341, San Antonio 1992, writ denied, and determined that authority existed for an award of attorneys' fees to the Claimant;

6. The Counterclaim and Third-Party Claim asserted by Respondents Butler Freeman Tally Financial Group, L.L.C., Wilda J. Berry, and Kenneth C. Boothe are dismissed and denied in their entirety;
7. Except for those sums specifically awarded, the parties shall bear their own costs of arbitration, including any additional attorneys' fees incurred in this arbitration; and
8. Any and all relief not specifically addressed herein, including punitive and/or treble damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 1,000.00
Counter claim/Third Party Claim 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. Accordingly, World Choice Securities, Inc. and Butler Freeman Tally Financial Group, L.L.C. are both a party to this arbitration and each is assessed the following member fees:

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

Joint request for October 13-17, 2003 = \$1,125.00 (Waived by Panel).

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. 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) Pre-hearing sessions with Panel @ \$1,125.00	= \$ 2,250.00
Pre-hearing conferences:	
April 17, 2003	1 session
September 24, 2003	1 session

Twelve (12) Hearing sessions @ \$1,125.00		= \$13,500.00
Hearing Dates:	November 17, 2003	1 session
	January 26, 2004	2 sessions
	January 27, 2004	2 sessions
	January 28, 2004	2 sessions
	January 29, 2004	3 sessions
	January 30, 2004	2 sessions
<hr/> Total Forum Fees		= \$15,750.00

The Panel has assessed \$7,875.00 of the forum fees to Claimant World Choice Securities, Inc. and has assessed the remaining \$7,875.00 of the forum fees jointly and severally to Respondents Butler Freeman Tally Financial Group, L.L.C. and Kenneth C. Boothe.

FEE SUMMARY

Claimant World Choice Securities, Inc. is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 7,875.00</u>
Total Fees	= \$14,075.00
<u>Less payments</u>	<u>= \$ 7,325.00</u>
Balance Due NASD Dispute Resolution	= \$ 6,750.00

Respondent Butler Freeman Tally Financial Group, L.L.C. is solely liable for:

Member Fees	= \$ 5,200.00
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Butler Freeman Tally Financial Group, L.L.C., Wilda J. Berry, and Kenneth C. Boothe are jointly and severally liable for:

Filing Fee	= \$ 500.00
<u>Less payments</u>	<u>= \$ 500.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Butler Freeman Tally Financial Group, L.L.C. and Kenneth C. Boothe are jointly and severally liable for:

Forum Fees	= \$ 7,875.00
<u>Less payments</u>	<u>= \$ 1,675.00</u>
Balance Due NASD Dispute Resolution	= \$ 6,200.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule

NASD Dispute Resolution

Arbitration No. 02-05406

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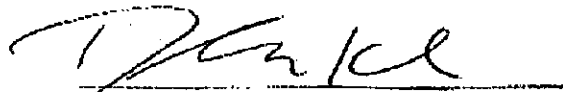
10330(g) of the Code.

ARBITRATION PANEL

Daniel A. Kile, Esq. - Public Arbitrator, Presiding Chairperson

Mark L. Williams, Esq. - Public Arbitrator

Ronald G. Johnson - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Daniel A. Kile, Esq.
Public Arbitrator, Presiding ChairpersonApril 14, 2004

Signature Date_____
Mark L. Williams, Esq.
Public Arbitrator_____
Signature Date_____
Ronald G. Johnson
Non-Public Arbitrator_____
Signature Date4/16/04 

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

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Daniel A. Kile, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Mark L. Williams, Esq.
Public Arbitrator

4.15.04

Signature Date

Ronald G. Johnson
Non-Public Arbitrator

Signature Date

4/16/04 RGA

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