
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Robert W. Baird & Co. Incorporated

Case Number: 02-07118

Names of the Respondents

SunAmerica Securities, Inc.

Glenn M. Ullmann

Aric Berquist

Deanna A. Calabrisotto

Hearing Site: Orlando, Florida

Nature of the Dispute: Member vs. Member and Associated Persons.

REPRESENTATION OF PARTIES

For Robert W. Baird & Co. Incorporated, hereinafter referred to as "Claimant": Chris Barber, Esq. and Ruth I. Major, Esq., Gardner, Carton & Douglas, Chicago, Illinois.

For SunAmerica Securities, Inc., hereinafter referred to as "Respondent SunAmerica": William W. Deem, Esq., McGuire Woods LLP, Jacksonville, Florida.

For Glenn M. Ullmann ("Ullmann"), Aric Berquist ("Berquist") and Deanna A. Calabrisotto ("Calabrisotto"), hereinafter collectively referred to as "Individual Respondents": Audrey McKibbin Moran, Esq., Moran Mediation Group and Litigation Group, P.A., Jacksonville, Florida.

CASE INFORMATION

Statement of Claim filed on or about: November 22, 2002.

Amended Statement of Claim filed on or about: February 6, 2003.

Claimant signed the Uniform Submission Agreement on: November 20, 2002.

Statement of Answer filed by Respondent SunAmerica on or about: March 3, 2003.

Statement of Answer filed by Individual Respondents on or about: March 3, 2003.

Amended Answer and Counterclaim filed by Individual Respondents on or about: January 2, 2004.

Claimant's Answer to Individual Respondents' Counterclaim filed on or about: February 25, 2004.

Respondent SunAmerica signed the Uniform Submission Agreement on: April 4, 2003.

Respondent Ullmann signed the Uniform Submission Agreement on: March 5, 2003.

Respondent Berquist signed the Uniform Submission Agreement on: March 5, 2003.

Respondent Calabrisotto signed the Uniform Submission Agreement on: March 5, 2003.

CASE SUMMARY

Claimant alleged the following causes of action: 1) breach of fiduciary duty by Individual Respondents; 2) aiding and abetting a breach of fiduciary duty and conspiracy by Respondents SunAmerica and Ullmann; 3) unfair competition by Respondents SunAmerica and Individual Respondents; 4) breach of contract by Individual Respondents; 5) tortious interference with agreement by Respondents SunAmerica and Ullmann; 6) tortious interference with employee and client contracts and advantageous business relationships by Respondents SunAmerica and Individual Respondents; 7) breach of contract by Respondent Berquist; 8) unjust enrichment by Respondent Berquist; 9) breach of contract by Respondent Berquist; and 10) breach of contract by Respondent Calabrisotto. The causes of action relate to Respondent SunAmerica's inducement of Claimant's clients to terminate their relationship with Claimant, Respondent Ullmann's breach of fiduciary duty to Claimant, and Respondents Berquist and Calabrisotto's misappropriation and misuse of confidential customer information and competition against Claimant while employed by Claimant.

Unless specifically admitted in its Answer, Respondent SunAmerica denied the allegations made in the Statement of Claim and asserted various defenses.

Unless specifically admitted in their Answer, the Individual Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

Individual Respondents alleged a counterclaim for breach of duty of loyalty against Claimant.

Unless specifically admitted in its Answer, Claimant denied the allegations made in the Individual Respondents' Counterclaim and asserted various defenses.

RELIEF REQUESTED

Claimant requested: 1) return of Claimant's original confidential and proprietary customer information and data; 2) compensatory damages in the amount exceeding \$1,500,000.00 resulting from Respondents' breaches of fiduciary duties, aiding and abetting such breaches and conspiracy, unfair competition, breach of contract, and tortious interference; 3) reimbursement of unearned commission advances from Respondent Berquist in an amount exceeding \$12,000.00; 4) reimbursement of training expenses from Respondent Berquist in the amount of \$16,000.00, plus pre-judgment interest and attorneys' fees; 5) reimbursement of training expenses from Respondent Calabrisotto in the amount of \$32,000.00, plus pre-judgment interest and attorneys' fees; 6) punitive damages in an amount exceeding \$1,500,000.00 from all Respondents; 7) pre-judgment interest; 8) costs; 9) attorneys' fees; and 10) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondent SunAmerica requested: 1) dismissal of the Statement of Claim in its entirety; 2) attorneys' fees; and 3) such other relief the Panel deemed just and proper.

Individual Respondents requested: 1) dismissal of the Statement of Claim in its entirety; 2) attorneys' fees; and 3) such other relief the Panel deemed just and proper.

Individual Respondents requested in their Counterclaim: 1) deferred compensation in the approximate amount of \$80,000.00; 2) legal fees in the amount of at least \$40,000.00; 3) costs in the amount of at least \$80,000.00; 4) compensatory damages of \$150,000.00 for loss of production; and 5) punitive damages in the amount of \$1,500,000.00.

Claimant requested dismissal with prejudice of the Individual Respondents' Counterclaim.

OTHER ISSUES CONSIDERED AND DECIDED

On or about December 16, 2003, the Individual Respondents filed their Motion for Leave to File Counterclaim. On or about December 30, 2003, Claimant filed its response to the motion. On or about January 26, 2004, the Panel granted the motion.

On or about January 19, 2004, Claimant filed its Motion to Dismiss Counterclaim. On or about January 28, 2004, the Individual Respondents filed their response to the motion. On or about February 7, 2004, the Panel denied the motion.

On or about May 17, 2004, Claimant filed its Motion for Sanctions. On or about September 16, 2004, Respondent SunAmerica filed its Response to Claimant's Motion for Sanctions. On or about September 20, 2004, the Individual Respondents filed their Response to Claimant's Motion for Sanctions. On or about October 7, 2004, Claimant filed its Reply in Support of Motion for Sanctions. On or about October 11, 2004, the Panel denied the motion.

On or about October 7, 2004, Respondents SunAmerica and Individual Respondents filed their Joint Motion for Sanctions for Failure to Comply with Twenty-Day Exchange Rule. On or about October 7, 2004, Claimant filed its Response in Opposition to Respondents' Motion for Sanctions. On or about October 11, 2004, the Panel denied the motion.

At the evidentiary hearing, Respondent SunAmerica moved for a directed verdict. The Panel denied the motion.

The parties 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. Claimant's claims are denied in their entirety.
2. Individual respondents' counterclaim is denied in its entirety.
3. Claimant is liable and shall pay to Respondents SunAmerica, Ullmann, Berquist and Calabrisotto attorneys' fees in an amount to be determined by a court of competent jurisdiction. The Panel finds that all of the respondents were the prevailing parties and finds Claimant liable for attorneys' fees for breach of contract and pursuant to Section 448.08, Florida Statutes.
4. Claimant's request for attorneys' fees is denied.
5. Claimant and Individual Respondents' requests for punitive damages are denied.
6. Any and all claims or relief not specifically addressed herein are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

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

| | |
|--------------------------|--------------|
| Initial claim filing fee | = \$2,000.00 |
| 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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Claimant and Respondent SunAmerica are member firms and parties.

| | |
|-------------------------|--------------|
| Member surcharge | = \$2,800.00 |
| Pre-hearing process fee | = \$ 750.00 |
| Hearing process fee | = \$5,000.00 |

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

On or about January 9, 2004, the Panel granted Claimant's motion, adjourned the evidentiary hearing scheduled for February 2 – 6, 2004 and February 9 – 13, 2004, and assessed the \$1,200.00 adjournment fee in the amount of \$400.00 to Claimant, \$400.00 to Respondent SunAmerica and \$400.00 jointly and severally to the Individual Respondents.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Four (4) Pre-hearing sessions with a single arbitrator @ \$450.00 per session = \$ 1,800.00

| | | |
|--------------------------|--------------------|-----------|
| Pre-hearing conferences: | July 18, 2003 | 1 session |
| | September 7, 2004 | 1 session |
| | September 9, 2004 | 1 session |
| | September 17, 2004 | 1 session |

Five (5) Pre-hearing sessions with Panel @ \$1,200.00 per session = \$ 6,000.00

| | | |
|--------------------------|--------------------|-----------|
| Pre-hearing conferences: | June 26, 2003 | 1 session |
| | January 2, 2004 | 1 session |
| | June 3, 2004 | 1 session |
| | September 24, 2004 | 1 session |
| | October 11, 2004 | 1 session |

Sixteen (16) Hearing sessions @ \$1,200.00 per session = \$19,200.00

| | | |
|----------------|------------------|------------|
| Hearing Dates: | October 18, 2004 | 2 sessions |
| | October 19, 2004 | 2 sessions |
| | October 20, 2004 | 2 sessions |
| | October 21, 2004 | 2 sessions |
| | October 22, 2004 | 2 sessions |
| | October 25, 2004 | 2 sessions |
| | October 26, 2004 | 2 sessions |
| | October 27, 2004 | 2 sessions |

Total Forum Fees = \$27,000.00

The Panel waived forum fees in the amount of \$450.00 as to the discovery pre-hearing conference of September 7, 2004.

The Panel has assessed forum fees in the amount of \$26,550.00 to Claimant.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

| | |
|-------------------------------------|---------------|
| Initial Filing Fee | = \$ 2,000.00 |
| Member Fees | = \$ 8,550.00 |
| Adjournment Fees | = \$ 400.00 |
| Forum Fees | = \$26,550.00 |
| Total Fees | = \$37,500.00 |
| Less payments | = \$12,150.00 |
| Balance Due NASD Dispute Resolution | = \$25,350.00 |

Respondent SunAmerica is solely liable for:

| | |
|-------------------------------------|---------------|
| Member Fees | = \$ 8,550.00 |
| Adjournment Fees | = \$ 400.00 |
| Total Fees | = \$ 8,950.00 |
| Less payments | = \$ 8,950.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Individual Respondents are jointly and severally liable for:

| | |
|-------------------------------------|-------------|
| Counterclaim Filing Fee | = \$ 500.00 |
| Adjournment Fees | = \$ 400.00 |
| Total Fees | = \$ 900.00 |
| Less payments | = \$ 900.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

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

ARBITRATION PANEL

| | | |
|---------------------|---|--|
| Paul E. Flora, Esq. | - | Public Arbitrator, Presiding Chairperson |
| James P. Ryan | - | Public Arbitrator |
| Thomas W. Sinclair | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

_____/s/_____
Paul E. Flora, Esq.
Public Arbitrator, Presiding Chairperson

November 24, 2004
Signature Date

_____/s/_____
James P. Ryan
Public Arbitrator

November 24, 2004
Signature Date


_____/s/_____
Thomas W. Sinclair
Non-Public Arbitrator

November 23, 2004
Signature Date

November 24, 2004
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 02-07118
Award Page 7

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Paul E. Flora, Esq.
Public Arbitrator, Presiding Chairperson

Nov 23 2004
Signature Date

James P. Ryan
Public Arbitrator

Signature Date

Thomas W. Sinclair
Non-Public Arbitrator

Signature Date

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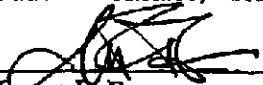
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NASD Dispute Resolution
Arbitration No. 02-07118
Award Page 7

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NASD Dispute Resolution
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Award Page 7

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Signature Date

James P. Ryan
Public Arbitrator

Signature Date



Thomas W. Sinclair
Non-Public Arbitrator

11/23/04

Signature Date

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