

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Okland Properties, Inc., Jack Okland, Sr. and Jeanne G. Okland, Claimants v. Empire Capital Group, LLC, Sterne, Agee & Leach, Inc. and William P. Enright, Jr., Respondents

Case Number: 03-01262

Situs: Salt Lake City, Utah

Nature of the Dispute: Customers v. Members and Associated Person

REPRESENTATION OF PARTIES

For Claimants:

Mark O. Morris, Esq.
Snell & Wilmer LLP
Salt Lake City, Utah

For Respondent Sterne, Agee & Leach, Inc.:

R. Allen Kilgore, Jr., Esq.
Maynard Cooper & Gale, PC
Birmingham, Alabama

Respondent Empire Capital Group, LLC
Did not enter an appearance in this matter:

Empire Capital Group, LLC
c/o Arizona Corporation Commission
Phoenix, Arizona

Respondent William P. Enright, Jr.
Did not enter an appearance in this matter:

William P. Enright, Jr.
In Pro Se
Phoenix, Arizona

CASE INFORMATION

Statement of Claim filed: February 20, 2003

Claimants' Joint Uniform Submission Agreement signed: February 19, 2003

Statement of Answer filed by Respondent Sterne, Agee & Leach, Inc.: June 4, 2003

Respondent Sterne, Agee & Leach, Inc.'s Uniform Submission Agreement signed: April 21, 2003

CASE SUMMARY

In their Statement of Claim, Claimants alleged unsuitability, churning, negligence, breach of fiduciary duty, and breach of contract, involving the purchase of Openware stock.

Respondent Sterne, Agee & Leach, Inc. denied the allegations as set forth in Claimants' Statement of Claim.

RELIEF REQUESTED

In their Statement of Claim, Claimants requested unspecified compensatory damages, unspecified pre- and post-judgment interest, and costs, including attorney's fees. In their Claim Information Sheet, Claimants requested compensatory damages of \$200,000.00 and punitive damages in the amount of \$600,000.00. In their Written Submission of Damage Claims in Support of their Motion for Default, Claimants requested compensatory damages in the amount of \$200,962.51, pre-judgment interest at a rate of 10% per annum from April 1, 2002 to March 31, 2004 in the amount of \$40,248.86, post-judgment interest at a rate of 10% per annum until this Award is paid in full, attorney's fees in the amount of \$19,847.00, and costs in the amount of \$2,690.12.

Respondent Sterne, Agee & Leach, Inc. requested dismissal of Claimants' claims in their entirety and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On or about June 11, 2003, Respondent Sterne, Agee & Leach, Inc. filed a Motion to Dismiss.

On or about June 23, 2003, Claimants filed a Motion for Default Procedures pursuant to Rule 10314(e)(4) of the Code of Arbitration Procedure ("Code") against Respondents Empire Capital Group, LLC and William P. Enright, Jr.

On or about September 9, 2003, the parties stipulated to the dismissal without prejudice of all claims brought against Respondent Sterne, Agee & Leach, Inc. On March 1, 2004, the Panel dismissed all Claims against Respondent Sterne, Agee & Leach, Inc. without prejudice.

Respondents Empire Capital Group, LLC and William P. Enright, Jr. did not file with NASD Dispute Resolution properly executed submission agreements but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Arbitrator on all issues submitted.

The arbitrators determined that Respondents Empire Capital Group, LLC and William P. Enright, Jr. were properly served notice of the Statement of Claim and Notification of the Arbitrators by certified mail, and that Respondents Empire Capital Group, LLC and William P. Enright, Jr. are required to submit to arbitration pursuant to the Code and are bound by the determination of the Arbitrators on all issues submitted.

AWARD

The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Empire Capital Group, LLC and William P. Enright, Jr. are jointly and severally liable to and shall pay Claimants the sum of \$200,962.51 in compensatory damages.
2. Respondents Empire Capital Group, LLC and William P. Enright, Jr. are jointly and severally liable to and shall pay Claimants pre-judgment interest at a rate of 10% per annum on the sum of \$200,962.51 from April 1, 2002 to March 31, 2004.
3. Respondents Empire Capital Group, LLC and William P. Enright, Jr. are jointly and severally liable to and shall pay Claimants post-judgment interest at a rate of 10% per annum on the sum of \$200,962.51 from the date of service of this Award until the Award is paid in full.
4. Respondents Empire Capital Group, LLC and William P. Enright, Jr. are jointly and severally liable to and shall pay Claimants the sum of \$19,847.00 in attorney's fees.
5. Respondents Empire Capital Group, LLC and William P. Enright, Jr. are jointly and severally liable to and shall pay Claimants costs in the sum of \$2,690.12.
6. All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$ 375.00

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, the member firm Sterne, Agee & Leach, Inc. is a party and the following fees are assessed:

Member Surcharge = \$ 2,250.00

Pre-Hearing Process Fee = \$ 750.00

Total Member Fees = \$ 3,000.00

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 or the parties and the Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$ 1,200 00

Pre-hearing conference: March 1, 2004 1 session

Forum Fee for Decision on the Papers = \$ 300.00

Total Forum Fees = \$ 1,500.00

The Panel assessed \$1,500.00 of the forum fees jointly and severally to Respondents Empire Capital Group, LLC and William P. Enright, Jr.

Fee Summary

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

Initial Filing Fee	= \$ 375.00
Less payments	= \$(1,575.00)
Refund Due Claimants	= \$(1,200.00)

2. Respondent Sterne, Agee & Leach, Inc. is charged with the following fees and costs:

Member Fees	= \$ 3,000.00
Less payments	= \$(2,250.00)
Balance Due NASD Dispute Resolution	= \$ 750.00

3. Respondents Empire Capital Group, LLC and William P. Enright, Jr. are jointly and severally charged with the following fees and costs:

Forum Fees	= \$ 1,500.00
Less payments	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 1,500.00


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

ARBITRATOR

Langdon T. Owen, Jr., Esq.

- Public Arbitrator, Presiding Chair

Arbitrator's Signature


Langdon T. Owen, Jr., Esq.
Chair, Public Arbitrator

Oct. 18, 2004
Signature Date

10/18/04
Date of Service