

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Dale E. Frey

v.

03-01359
Denver, Colorado

Respondents

D.E. Frey & Company, Inc., D.E. Frey Group, Inc.,
First Allied Securities, Inc., Royce Nies,
Paul L. Hocevar, Larry D. Hayden, and David Wharton

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

REPRESENTATION OF PARTIES

Dale E. Frey ("Claimant") was represented by Cole A. Wist, Esq., of Patton Boggs, LLP, Denver, Colorado.

D.E. Frey & Company, Inc. ("DEFC") and D.E. Frey Group, Inc ("the Group") were represented by Steve A. Miller, Esq., Denver, Colorado until his Notice of Withdrawal on or about September 19, 2003. Kenneth R. Bennington, Esq., of Bennington Johnson Biermann & Craigmile, LLC, Denver, Colorado appeared for Respondents DEFC and the Group on or about September 19, 2003.

First Allied Securities, Inc. ("FAS"), Royce Nies ("Nies") and David Wharton ("Wharton") were represented by Mary Stuart, Esq., of Holme Roberts & Owen, LLP, Denver Colorado.

Paul L. Hocevar ("Hocevar") and Larry D. Hayden ("Hayden") were represented by Kenneth R. Bennington, Esq., of Bennington Johnson Biermann & Craigmile, LLC, Denver, Colorado. Mr. Bennington appeared on or about September 19, 2003.

CASE INFORMATION

The Statement of Claim was filed on or about February 24, 2003. The Submission Agreement of Claimant was signed on or about February 19, 2003.

A Joint Statement of Answer was filed by Respondents D.E. Frey & Company, Inc. and D.E. Frey Group on or about April 25, 2003. The Submission Agreement of Respondent D.E. Frey & Company, Inc. was signed on or about April 25, 2003. The Submission Agreement of Respondent D.E. Frey Group, Inc was signed on or about April 25, 2003.

A Statement of Answer was filed by Respondent First Allied Securities, Inc. on or about April 25, 2003. The Submission Agreement of Respondent First Allied Securities, Inc. was signed on or about June 20, 2003.

A Joint Statement of Answer was filed by Respondents Royce Nies and David Wharton on or about April 25, 2003. The Submission Agreement of Respondent Royce Nies was signed on or about June 19, 2003. The Submission Agreement of Respondent David Wharton was signed on or about June 18, 2003.

A Statement of Answer was filed by Respondent Paul L. Hovevar on or about April 25, 2003. The Submission Agreement of Respondent Paul L. Hovevar was signed on or about April 24, 2003.

A Statement of Answer and Motion to Dismiss was filed by Respondent Larry D. Hayden on or about April 21, 2003. The Submission Agreement of Respondent Larry D. Hayden was signed on or about April 21, 2003.

Claimant filed a Response to Larry D. Hayden's Motion to Dismiss on or about May 13, 2003.

Claimant and Respondents D.E. Frey & Company, Inc., D.E. Frey Group, Inc., Paul L. Hovevar and Larry Hayden submitted a Stipulated Motion for Dismissal Without Prejudice on or about January 15, 2004.

Respondents, First Allied Securities, Inc., Royce Nies and David Wharton, submitted an Opposition to the Stipulated Motion to Dismiss Without Prejudice on or about January 22, 2004.

Claimant and Respondents D.E. Frey & Company, Inc., D.E. Frey Group, Inc., Paul L. Hovevar and Larry Hayden submitted a Reply to the Opposition to the Stipulated Motion to Dismiss Without Prejudice on or about February 13, 2004.

Respondent First Allied Securities, Inc. submitted a Motion for Summary Judgment on or about February 24, 2004.

Respondents Royce Nies and David Wharton submitted a joint Motion for Summary Judgment on or about February 24, 2004.

Claimant submitted a Response in Opposition to the Motions for Summary Judgment submitted by Respondents First Allied Securities, Inc., Royce Nies and David Wharton on or about March 25, 2004.

Respondents First Allied Securities, Inc., Royce Nies and David Wharton submitted a Reply in Further Support of their Motions for Summary Judgment on or about April 5, 2004.

CASE SUMMARY

Claimant asserted causes of action including the following: breach of employment contract, unjust enrichment, tortious interference, civil conspiracy, intentional interference with contractual relations, promissory estoppel and misrepresentations. The causes of action related to Claimant's allegation that he was terminated by DEFC without cause and that DEFC breached the employment contract with Claimant dated October 27, 1994. Claimant asserted that he engaged, on behalf of DEFC, in a business transaction with FAS that would allow DEFC to resume operations after DEFC was forced to cease operations due to a violation of its net capital requirements. Claimant alleged that he reached a Memorandum of Understanding ("MOU") with FAS on October 6, 2000, in which Claimant would retain brokers from DEFC and recruit them to FAS. According to Claimant, FAS refused to finalize a contract of professional services with Claimant as outlined in the MOU and that the Group determined that it would not loan Claimant monies as contemplated in the MOU. Claimant alleged that FAS acted intentionally to induce DEFC into breaching the October 27, 1994, employment contract, whereby Claimant was to perform services for the Group. Claimant further asserted that Respondents were part of a conspiracy to defame Claimant for the violation of DEFC's net capital requirements.

Respondents, D.E. Frey & Company and D.E. Frey Group, denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimant breached his employment agreement, did not act in good faith, and did not act in the best interests of D.E. Frey & Company, Inc. and D.E. Frey Group; Claimant's claims are barred by the statutes of limitation or laches; and Claimant failed to state a claim upon which relief can be granted.

Respondent First Allied Securities, Inc. denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimant's claims are barred by failure of conditions precedent; Claimant's claims are barred by failure of consideration; Claimant's claims are barred by the doctrines of unclean hands, waiver, estoppel and laches; Claimant's claims for civil conspiracy fail to satisfy the requirement of two or more persons, or a meeting of the minds; FAS's actions were lawful and within reasonable business judgment; and Claimant failed to state a claim upon which relief can be granted.

Respondents Royce Nies and David Wharton denied the allegations set forth in the Statement of Claim and incorporated the defenses listed in Respondent FAS's Answer.

Respondent Paul L. Hovevar denied the allegations set forth in the Statement of Claim and asserted various defenses.

Respondent Larry D. Hayden denied the allegations set forth in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested an award in the amount of \$14,600,000 in compensatory damages, plus \$12,000,000 in punitive damages, attorney's fees, costs interest, and any other relief that the Panel deemed just and equitable.

Respondents D.E. Frey & Company and D.E. Frey Group requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

Respondent First Allied Securities, Inc. requested that the claims asserted against it be dismissed with prejudice in their entirety and that it be awarded its costs and attorneys' fees.

Respondents Royce Nies and David Wharton requested that the claims asserted against them be dismissed with prejudice in their entirety and that they be awarded their costs and attorneys' fees.

Respondent Paul L. Hocevar requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees.

Respondent Larry D. Hayden requested that the claims asserted against him be denied and requested that an Order of Dismissal be entered by the panel for all claims against Hayden.

OTHER ISSUES CONSIDERED & DECIDED

On or about February 13, 2004, Respondent D.E. Frey Group, Inc., submitted a Notice of Filing of Petition of Bankruptcy and is subject to an automatic stay. The Panel did not adjudicate any claims against Respondent D.E. Frey Group, Inc.

The Arbitration Panel entered an Order on or about April 6, 2004 dismissing all claims against Respondents D.E. Frey & Company, Inc., Paul L. Hocevar and Larry Hayden without prejudice.

On or about April 15, 2004, the Panel ruled that the Motion for Summary Judgment filed by First Allied Securities, Inc. (FAS) was granted in part and denied in part, and the Motion for Summary Judgment filed by Royce Nies and David Wharton was granted in part and denied in part.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, First Allied Securities, Inc., is liable for and shall pay to Claimant, Dale E. Frey, the sum of Seventy Five Thousand Dollars and No Cents (\$75,000.00) in compensatory damages;
2. Respondent, First Allied Securities, Inc., is liable for and shall pay to Claimant, Dale E. Frey, interest on the above-stated sum at 8% per annum from and including January 1, 2001, through and including the date this award is paid in full;
3. Claimant's claims against Respondent Royce Nies are denied in their entirety and dismissed with prejudice;
4. Claimant's claims against Respondent David Wharton are denied in their entirety and dismissed with prejudice;
5. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages, are denied with prejudice; and
6. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 600

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 persons at the time of the events giving rise to the dispute. In this matter, the member firms are D.E. Frey & Company, Inc. and First Allied Securities, Inc.

Member surcharge	= \$ 3,750
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 5,500

Forum Fees and Assessments

The Arbitration Panel assesses 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:

Four (4) Pre-hearing sessions with Panel x \$ 1,200	= \$ 4,800
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Pre-hearing conferences:	09/22/2003	1 session
	02/27/2004	1 session
	03/16/2004	1 session
	04/15/2004	1 session

Twelve (12) Hearing sessions with Panel x \$ 1,200	= \$ 14,400
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Hearing Dates:	05/10/2004	2 sessions
	05/11/2004	2 sessions
	05/12/2004	2 sessions
	05/13/2004	2 sessions
	06/28/2004	2 sessions
	06/29/2004	2 sessions

Total Forum Fees	= \$ 19,200
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The Arbitration Panel has assessed \$ 9,600 of the forum fees to Dale E. Frey.

The Arbitration Panel has assessed \$ 9,600 of the forum fees to First Allied Securities, Inc.

Fee Summary

Claimant, Dale E. Frey is liable for:

Initial Filing Fee	= \$ 600
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Forum Fees	= \$ 9,600
Total Fees	= \$ 10,200
Less payments	= \$ 1,800
Balance Due NASD Dispute Resolution	= \$ 8,400

Respondent, D.E. Frey & Company, Inc., is liable for:

Member Fees	= \$ 10,000
Total Fees	= \$ 10,000
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 10,000

Respondent, First Allied Securities, Inc., is liable for:

Member Fees	= \$ 10,000
Forum Fees	= \$ 9,600
Total Fees	= \$ 19,600
Less payments	= \$ 10,000
Balance Due NASD Dispute Resolution	= \$ 9,600

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

ARBITRATION PANEL

Bradford J. Lam, Esq. - Public Arbitrator, Presiding Chair
Michelle D. Conklin, Esq. - Public Arbitrator
Johanna Ellen Barrows- Non-Public Arbitrator

Concurring Arbitrators:

Bradford J. Lam, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Michelle D. Conklin, Esq.
Public Arbitrator

Signature Date

Johanna Ellen Barrows
Non-Public Arbitrator

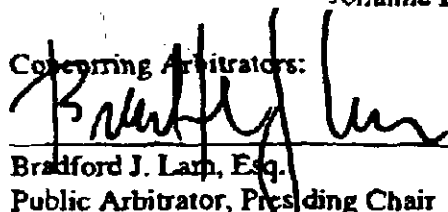
Signature Date

2/25/01
Date of Service (NASD use only)

ARBITRATION PANEL

Bradford J. Lam, Esq. - Public Arbitrator, Presiding Chair
Michelle D. Conklin, Esq. - Public Arbitrator
Johanna Ellen Barrows- Non-Public Arbitrator

Concurring Arbitrators:



Bradford J. Lam, Esq.
Public Arbitrator, Presiding Chair

July 22, 2004.

Signature Date

Michelle D. Conklin, Esq.
Public Arbitrator

Signature Date

Johanna Ellen Barrows
Non-Public Arbitrator

Signature Date

7/23/04

Date of Service (NASD use only)

ARBITRATION PANEL

Bradford J. Lam, Esq. - Public Arbitrator, Presiding Chair
Michelle D. Conklin, Esq. - Public Arbitrator
Johanna Ellen Barrows- Non-Public Arbitrator

Concurring Arbitrators:

Bradford J. Lam, Esq.
Public Arbitrator, Presiding Chair



Michelle D. Conklin, Esq.
Public Arbitrator

Signature Date

7/22/04

Signature Date

Johanna Ellen Barrows
Non-Public Arbitrator

Signature Date

7/22/04

Date of Service (NASD use only)

ARBITRATION PANEL

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Michelle D. Conklin, Esq. - Public Arbitrator
Johanna Ellen Barrows- Non-Public Arbitrator

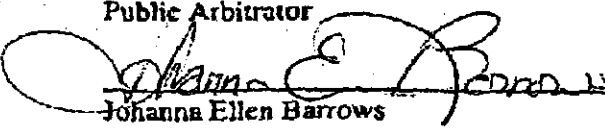
Concurring Arbitrators:

Bradford J. Lam, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Michelle D. Conklin, Esq.
Public Arbitrator

Signature Date



Johanna Ellen Barrows
Non-Public Arbitrator

7/21/04

Signature Date

7/22/04

Date of Service (NASD use only)