

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Teresa A. Beckmeyer, Claimant v. Waddell & Reed, Inc., Respondent

Case Number: 04-01545

Hearing Site: Portland, Oregon

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Nature of the Dispute: Associated Person v. Member

**REPRESENTATION OF PARTIES**

For Claimant:

Michael R. Seidl, Esq.  
Seidl Law Office  
Portland, Oregon

For Respondent:

Keith A. Ketterling, Esq.  
Stoll Stoll Berne Lokting &  
Shlachter  
Portland, Oregon

**CASE INFORMATION**

Statement of Claim filed: March 5, 2004

Amended Statement of Claim filed: November 15, 2004

Claimant's Uniform Submission Agreement signed: February 26, 2004

Statement of Answer filed by Respondent: April 30, 2004

Statement of Answer to Amended Statement of Claim filed by Respondent: November 23, 2004

Respondent's Uniform Submission Agreement signed: March 17, 2004

### **CASE SUMMARY**

In her Initial and Amended Statements of Claim, Claimant alleged breach of contract, interference with business relationships, and promissory estoppel. Claimant's allegations involved breach of her employment contract with Respondent.

Respondent denied the allegations of wrongdoing as set forth in the Claimant's Initial and Amended Statements of Claim.

### **RELIEF REQUESTED**

Claimant requested unspecified compensatory damages, non-economic damages in the sum of \$500,000.00, punitive damages in the sum of \$5 million, pre- and post-judgment interest and costs.

Respondent requested dismissal of the Claimant's Initial and Amended Statements of Claim in their entirety.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On or about October 1, 2004, Respondent moved the Panel to dismiss Claimant's claim for interference with economic relations. On October 28, 2004, a telephonic pre-hearing conference was held, attended by the Parties and the Panel. After due deliberation in an executive session, the Panel denied the motion subject to Claimant re-pleading the specific theory of her third-party interference claim.

On or about November 22, 2004, Claimant moved the Panel for permission to amend her claim for punitive damages. On November 22, 2004, a telephonic pre-hearing conference was held, attended by the Parties and the Panel. After due deliberation in an executive session, the Panel denied the motion without prejudice.

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

### **FINDINGS AND CONCLUSIONS**

Claimant Teresa A. Beckmeyer (hereinafter Beckmeyer) commenced this proceeding against Respondent Waddell & Reed, Inc. (hereinafter Waddell & Reed) for economic damages in the amount of income she allegedly would have earned from client accounts she was managing that were transferred from her by Waddell & Reed. Beckmeyer also sought non-economic damages for emotional distress, punitive damages, and other relief in the Arbitration Panel's discretion. Beckmeyer alleged that Waddell & Reed breached the Professional Career Agreement it entered into with her; that Waddell & Reed interfered with business relationships she enjoyed with her former employer, Dinah Nicholson, and the clients she took over for Ms. Nicholson; that Waddell & Reed owed her an accounting; and that Waddell & Reed should be estopped from transferring clients from her to another Waddell & Reed financial advisor. For the reasons that follow, we reject all but the breach of contract claim. On that theory, we find in favor of Waddell & Reed on the express contract theory, and in favor of Beckmeyer for breach of the implied covenant of good faith and fair dealing. We award damages and further relief as explained below.

### **LIABILITY**

The Panel rejects the tort theories (intentional interference with business relations) on legal grounds. As a matter of law, Beckmeyer did not have a protectable, independent relationship with her clients, because at all times she acted as an agent of Waddell & Reed in rendering services to them. Under Oregon law, "a party to a contract cannot be liable for interference with that contract." McGanty v. Staudenraus, 321 Or 532, 537, 901 P2d 841 (1995).

Beckmeyer's claim for interference with her business relationship with Dinah Nicholson is also legally unsound. The allegedly protectable interest arises from a contract between Waddell & Reed and Ms. Nicholson. Beckmeyer is neither a party to the contract nor an intended beneficiary of it.

The accounting claim and the promissory estoppel theory are rejected on factual grounds for lack of evidence.

As for the breach of contract claim, the Panel finds in favor of Waddell & Reed on the express contract terms. Waddell & Reed has correctly stated the law regarding objectively reasonable expectations and modification of an at-will agreement. Claimant chose to remain a Waddell & Reed financial advisor following both transfers of a portion of her client base. Regardless of her protestations, her continuing reliance upon the Professional Career Agreement modifies the agreement and affirms her acceptance of the modified terms.<sup>1</sup>

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<sup>1</sup> While it was not pleaded in her Statement of Claim, Beckmeyer also contended that Waddell & Reed should be held liable for transferring clients without their consent and for violation of the Investment Advisers Act. We reject

Oregon law implies an obligation of good faith and fair dealing in the negotiation and performance of every contract. Best v. US National Bank, 303 Or 557, 561 739 P2d 554 (1987). While it is true that an at-will contract may be terminated without implicating the implied covenant, the duty still arises "in matters pertaining to on-going performance of at-will employment [and other] agreements." Sheets v. Knight, 308 Or 220, 233, 779 P2d 1000 (1989).

The Panel finds in favor of Teresa Beckmeyer, and against Waddell & Reed for breach of the implied covenant of good faith and fair dealing based upon Ms. Beckmeyer's continuing objectively reasonable expectation that Waddell & Reed would abide by its own Compliance Manual and the rules and regulations of the NASD, both of which require truthful communications with clients. Ms. Beckmeyer has standing to assert the specific falsehood told to her clients, because it is about her and because it casts her in a negative light. We find that Waddell & Reed violated its Communication Standards (Exhibit 117, p. D-17), and NASD Rule 2210(d)(1)(A)(B). We find that it was a material misrepresentation for Waddell & Reed to tell Beckmeyer's clients that she had asked to have them reassigned. In that context, we further find that it was a material omission for Waddell & Reed not to tell these same clients that they could keep Beckmeyer as their financial advisor if they chose to do so. Whether there were sound business reasons for the reassignment misses the point entirely. We believe both damages and other relief are appropriate for this deliberate breach of the implied covenant of good faith and fair dealing.

The Panel finds further, that Waddell & Reed's conduct was reprehensible. Accordingly, and to mitigate at least some of the harm done to Beckmeyer, we order that Waddell & Reed deliver to Beckmeyer a letter of apology signed by Stan Renskers, Regional Vice President, Northwest Region. The letter shall either include a copy of this Award or recite the specific findings against Waddell & Reed set forth in this Award. The original letter shall be given to Ms. Beckmeyer, and a copy of it shall be retained in her Waddell & Reed file for the remainder of her tenure with Waddell & Reed. If Beckmeyer believes that the letter does not comport with this Award, she may submit it to the Arbitration Panel for review and we will make that determination for the parties.

The letter Waddell & Reed sent to Beckmeyer's clients admittedly violates NASD Rule 2210(d)(1)(A), through a material misrepresentation and a material omission. Beaverton manager James Latham testified unapologetically that he is "sure the letter was actually sent to clients," and that the arbitrators could assume that he had personally approved it.

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the unauthorized transfer theory because Waddell & Reed was not prohibited from making the transfers and, in any event, Beckmeyer lacks standing to bring that claim. Likewise, to the extent that any clients were deceived or misled, Beckmeyer lacks standing to assert those claims. She further lacks standing to seek relief under the Investment Advisers Act. In addition, there is no contract at issue, and the only remedy under the Investment Advisers Act is rescission and restitution, which Beckmeyer does not and cannot seek.

### **CONCLUSION**

This was a lengthy and difficult arbitration, and the Panel appreciates the imposition upon Waddell & Reed's business operations and the personal strain for Ms. Beckmeyer. Both parties were well served by competent and well-prepared counsel, and the arbitrators thank both parties for their courtesies and cooperation.

### **AWARD**

After considering the pleadings, testimony, evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent is liable to and shall pay Claimant the sum of \$45,000.00 in compensatory damages.
- 2) Respondent is liable to and shall pay Claimant the sum of \$600.00 as reimbursement of the claim filing fee.
- 3) Respondent shall send a letter of apology to Claimant signed by Stan Renskers, Regional Vice President, Northwest Region. The letter shall either include a copy of this Award or recite the specific findings against Waddell & Reed set forth in this Award. The Panel further orders that the original letter shall be given to Ms. Beckmeyer, and a copy of it shall be retained in her Waddell & Reed file for the remainder of her tenure with Waddell & Reed. If Beckmeyer believes that the letter does not comport with this Award, she may submit it to the Arbitration Panel for review and we will make that determination for the parties.
- 4) Claimant's claim for attorney's fees is denied because Claimant did not allege entitlement to attorney fees until after the hearing of the matter.
- 5) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 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	= \$ 600.00
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#### **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 Waddell & Reed, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$5,000.00
<b>Total Member Fees</b>	<b>= \$8,550.00</b>

#### **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:

(2) Pre-hearing conference sessions with a single arbitrator @ \$ 450.00/session	= \$ 900.00
Pre-hearing conferences:	
November 19, 2004	1 session
November 22, 2004	1 session
(2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences:	
July 6, 2004	1 session
October 28, 2004	1 session
(9) Hearing sessions @ \$1,200.00/session	= \$ 10,800.00
Hearings:	
November 29, 2004	2 sessions
November 30, 2004	2 sessions
December 1, 2004	2 sessions
December 2, 2004	2 sessions
December 3, 2004	1 session
<b>Total Forum Fees</b>	<b>= \$ 14,100.00</b>

The Panel assessed \$14,100.00 of the forum fees to Respondent.

**Fee Summary**

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

Initial Filing Fee	= \$ 600.00
<u>Less payments</u>	<u>= \$(1,800.00)</u>
<b>Refund Due Claimant</b>	<b>= \$(1,200.00)</b>

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

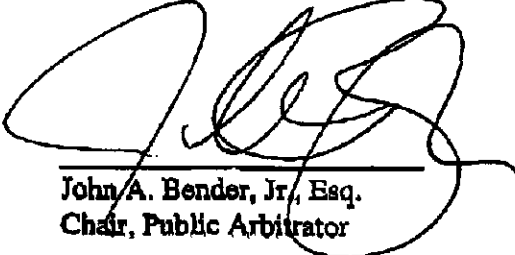
Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	<u>= \$14,100.00</u>
Total Fees	= \$22,650.00
<u>Less payments</u>	<u>= \$( 8,550.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 14,100.00</b>

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.

**ARBITRATION PANEL**

John A. Bender, Jr., Esq.	-	Public Arbitrator, Presiding Chair
Nancie K. Potter, Esq.	-	Public Arbitrator
Daniel Dunnington	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



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John A. Bender, Jr., Esq.  
Chair, Public Arbitrator

2/24/05  
Signature Date

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Nancie K. Potter, Esq.  
Public Arbitrator

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Signature Date

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Daniel Dunnington  
Non-Public Arbitrator

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Signature Date

2/25/05  
Date of Service



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Signature Date

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Date of Service