

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

David A. Windhauser (Claimant) v. Excel Securities & Associates, Inc. and Deutsche Bank Securities, Inc., Terence P. Britt, and Joseph Lanzisera (Respondents)

Case Number: 04-05606

Hearing Site: Buffalo, New York

Nature of the Dispute: Customer v. Members

REPRESENTATION OF PARTIES

Claimant David A. Windhauser, hereinafter referred to as "Claimant": David H. Ealy, Esq., Shapiro, Rosenbaum, Liebschutz & Nelson, Rochester, NY.

Respondent Excel Securities & Associates, Inc. ("Excel"), Deutsche Bank Securities, Inc. ("Deutsche Bank"), Terrence P. Britt ("Britt") and Joseph Lanzisera ("Lanzisera"), hereinafter collectively referred to as "Respondents": David S. Stern, Esq., Elliott, Stern & Calabrese, LLP, Rochester, NY.

CASE INFORMATION

Statement of Claim filed on or about: August 4, 2004.

Reply to Counterclaim filed on or about: October 8, 2004.

Amended Statement of Claim filed on or about: October 19, 2004.

Reply to Amended Counterclaim filed on or about: October 19, 2004.

Declaration in Opposition to Excel and Deutsche Bank's Motion to Dismiss and Cross-Motion for Sanctions filed on or about: October 19, 2004.

Reply to Counterclaim in Joint Answer of Respondents filed on or about: November 12, 2004.

Claimant signed the Uniform Submission Agreement: August 3, 2004.

Statement of Answer filed by Excel and Deutsche Bank on or about: September 16, 2004.

Amended Answer filed by Excel and Deutsche Bank on or about: October 7, 2004.

Motion to Dismiss filed by Excel and Deutsche Bank on or about: October 7, 2004.

Joint Statement of Answer and Counterclaim filed by Respondents on or about: October 21, 2004.

Excel signed the Uniform Submission Agreement: September 15, 2004.

Deutsche Bank did not sign the Uniform Submission Agreement.

Britt did not sign the Uniform Submission Agreement.

Lanzisera did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: unauthorized transfer; delay in execution; increased income tax liability as a consequence of the illegal offset; fraud; and breach of fiduciary duty. The causes of action relate to the liquidation of the Claimant's IRA account to off-set Brokerage account deficiencies.

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

In their Answer, Respondents included a counterclaim for attorneys' fees and costs pursuant to the IRA agreement.

Unless specifically admitted in his Reply (and Amended Reply) to the Counterclaim, Claimant denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages as follows:

1. in the amount of \$22,549.89 on Claimant's first claim against Respondents Excel and Deutsche Bank and the sixth claim against Respondents Excel, Deutsche Bank, and Britt to recover the amount of IRA account proceeds illegally offset and retained;
2. in the amount of \$2,979.55 on Claimant's second claim against Respondents Excel and Deutsche Bank to recover damages for Respondents' unauthorized delay in liquidating Claimant's IRA account;
3. in the amount of \$6,665.99 on Claimant's third claim against Respondents Excel and Deutsche Bank and the sixth claim against Respondents Excel, Deutsche Bank, and Britt to recover damages suffered by Claimant for premature recognition of gain as a result of the illegal and unauthorized offset; and
4. interest in the amount of \$32,195.43 representing actual damages claimed in respect of Claimants' first, second, and third claims against Respondents Excel and Deutsche Bank.

In addition, Claimant requested attorneys' fees in the amount of \$25,000.00 against Respondents Excel, Deutsche Bank, and Britt; punitive damages in the amount of \$50,000.00 against Respondents Deutsche Bank and Excel; punitive damages in the amount of \$200,000.00 against Respondents Deutsche Bank, Excel, and Britt; and interest from July 29, 2002 at the rate of nine percent per annum, and the costs and disbursement of this arbitration.

Respondents requested that the Claimant's Amended Statement of Claim be dismissed in its entirety; that judgment be entered against the Claimant in the amount of \$7,500.00 on Respondents' first counterclaim; that the costs and disbursements of this proceeding be assessed against the Claimants; and such other relief as may be just and proper.

Claimant requested that Respondents' counterclaim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Deutsche Bank, Britt, and Lanzisera did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim and appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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.

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. Respondents Excel and Deutsche Bank are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$32,195.43.
2. Claimant is liable for and shall pay to Respondent Excel compensatory damages in the amount of \$4,358.46.
3. Claimant is liable for and shall pay to Respondent Deutsche Bank compensatory damages in the amount of \$4,358.46.
4. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Britt's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Britt must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130 of the NASD Code of Arbitration Procedure, the arbitration panel has made the following affirmative findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

5. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Lanzisera's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-

16, Respondent Lanzisera must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130 of the NASD Code of Arbitration Procedure, the arbitration panel has made the following affirmative findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

6. Any and all relief not specifically addressed herein, including punitive 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	= \$ 300.00
Counter 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, Excel and Deutsche Bank are parties.

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

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 arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 per session	= \$ 450.00
Pre-hearing conference: August 24, 2005 1 session	

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 per session	= \$ 2,250.00
Pre-hearing conferences: April 26, 2005 1 session	
September 12, 2005 1 session	

Six (6) Hearing sessions @ \$1,125.00 per session	= \$ 6,750.00
Hearing Dates: September 20, 2005 2 sessions	

September 21, 2005 2 sessions

September 22, 2005 2 sessions

Total Forum Fees = \$ 9,450.00

1. The Panel has assessed \$4,725.00 of the forum fees to Claimant.
2. The Panel has assessed \$2,362.50 of the forum fees to Respondent Excel.
3. The Panel has assessed \$2,362.50 of the forum fees to Respondent Deutsche Bank.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 4,725.00
Total Fees	= \$ 5,025.00
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 3,600.00

2. Respondent Deutsche Bank is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 2,362.50
Total Fees	= \$ 7,562.50
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 2,362.50

3. Respondent Excel is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 2,362.50
Total Fees	= \$ 7,562.50
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 2,362.50

4. Respondents Excel, Deutsche Bank, Britt and Lanzisera are jointly and severally liable for:

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

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

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Arbitration No. 04-05606
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ARBITRATION PANEL

Thomas E. Webb, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Robert C. Pringle	-	Public Arbitrator
James A. Joseph	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Thomas E. Webb, Jr., Esq.
Public Arbitrator, Presiding Chairperson


Signature Date

Robert C. Pringle
Public Arbitrator

Signature Date

James A. Joseph
Non-Public Arbitrator

Signature Date

February 7, 2006

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

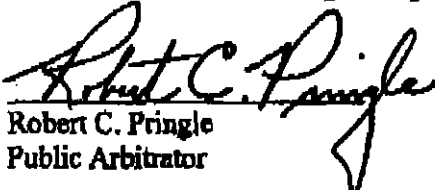
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Robert C. Pringle	-	Public Arbitrator
James A. Joseph	-	Non-Public Arbitrator

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I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Thomas E. Webb, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Robert C. Pringle
Public Arbitrator


Signature Date

James A. Joseph
Non-Public Arbitrator

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February 7, 2006

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Thomas E. Webb, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Robert C. Pringle
Public Arbitrator

Signature Date

James A. Joseph
Non-Public Arbitrator

 2/3/06

Signature Date

February 7, 2006

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