

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Sanford C. Bernstein & Co., LLC,
a wholly owned subsidiary of Alliance
Capital Management, L.P.

and

Case Number: 04-06495
Hearing Site: Chicago, Illinois

Name of Respondent

Thomas Drake

NATURE OF DISPUTE

Member v. Associated Person

REPRESENTATION OF PARTIES

Sanford C. Bernstein & Co., LLC, a wholly owned subsidiary of Alliance Capital Management, L.P., ("**Bernstein**"), ("**Alliance**") or ("**Claimants**") were represented by Lawrence Goldberg, Esq., of Goldberg Wehrle LLC., located in St. Louis Missouri.

Thomas Drake ("**Respondent**") or ("**Drake**") was represented by Andrew B. David, Esq., of Sugar Freidberg & Felsenthal, LLP, located in Chicago, Illinois and Steven Wiess, of Schopf and Weiss, LLP, Located in Chicago, Illinois.

CASE INFORMATION

On or about September 13, 2004 Alliance Capital submitted a request for permanent injunctive relief and damages. The Submission Agreement of Claimant was signed on or about September 10, 2004.

Statement of Answer and Counter-Claim was filed by Respondent Thomas Drake on or about September 28, 2004. The Submission Agreement of Respondent was signed on or about September 20, 2004.

On September 30 and October 1, 2004, a Hearing was held on the parties' Cross-Requests for Permanent Injunctive Relief.

On October 1, 2004, the Panel Granted Permanent Injunctive Relief, *infra*.

On or about October 11, 2004 Respondent Drake filed a Motion for to Dismiss the remainder of Claimant's case.

On or about November 29, 2004 Claimant Alliance filed a Response to Respondent's Motion to Dismiss.

On or about December 14, 2004 Respondent filed a Reply in Support of the Motion to Dismiss.

On December 21, 2004, the Panel held a Telephonic Hearing on Respondent's Motion to Dismiss, and entered an Order deeming the Respondent's Motion to Dismiss to in fact be a Motion for Summary Judgment. The Panel further allowed the parties to submit supplemental briefing on the Motion for Summary Judgment.

On or about January 14, 2005, the Claimant Alliance filed its (supplemental) Response in Opposition to Respondent's Motion for Summary Judgment (incl. Affidavits & Exhibits).

On January 24, 2005, the Respondent filed his Reply in Further Support of his Motion for Summary Judgment, and Respondent's Motion to Strike the Affidavit of Richard Bindler Submitted in Opposition to Respondent's Motion for Summary Judgment.

CASE SUMMARY

Claimants asserted the following causes of action: Breach of contract, misappropriation of trade secrets, breach of fiduciary duty and duty of loyalty, unfair competition. Claimants sought a Permanent Injunction prohibiting Respondent from using or disclosing client information and from soliciting his former clients at Alliance. Claimants further sought damages arising from Respondent's alleged violation of his employment agreement.

The causes of action relate to the following: Respondent Drake was previously affiliated with Claimants until his resignation on September 3, 2004. Respondent subsequently commenced employment with a competitor of Claimant. In his connection with his employment with Claimant, Respondent signed an agreement that prohibited him from using or disclosing for his own benefit or the benefit of others, client information or other sensitive information pertaining to Claimants. He also agreed not to solicit clients or perspective clients of Alliance.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Respondent's clients were originated and developed by Respondent; Claimants have interfered with and threatened interference with the rights of customers to transfer their accounts.

In his Counter-Claim, Respondent Drake sought a permanent injunction against Claimants from the following; interference with any client's efforts to transfer their accounts from Alliance to Merrill Lynch, or their efforts to obtain information from which to make a meaningful choice; and, soliciting any of the clients originated by Drake or his own referral sources through any misleading statements.

RELIEF REQUESTED

Claimants requested an award in the amount of \$1,000,000.00 in compensatory damages, attorneys' fees and costs. Claimants requested that the Counter-Claim against them be dismissed in its entirety with prejudice.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. Respondent also filed a Counter-Claim for unspecified damages.

OTHER ISSUES CONSIDERED & DECIDED

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 original remain on file with NASD Dispute Resolution ("NASD").

On September 16, 2004 the Circuit Court of Cook County, Illinois issued a temporary restraining order in Favor of Alliance Capital Management.

On September 13, 2004 Alliance submitted a request for permanent injunctive relief against Respondent Thomas Drake. On September 28, 2004 the Respondent-Counter-Claimant, filed a Cross-Motion for permanent injunctive relief against Alliance Capital.

A hearing was held on September 30, 2004 and October 1, 2004 on the parties' Cross-Requests for Permanent Injunctive Relief, and the Panel granted the following Permanent Injunctive Relief:

PERMANENT INJUNCTION

I. EXPIRATION OF T.R.O.

By its own terms, the T.R.O. entered by the Cook County Circuit Court (Hon.

Judge Patrick McGann) on 9/17/04 in case number 04 CH 14934 is DISSOLVED by virtue of the entry of our decision herein.

II. ANNOUNCEMENTS

- (a) Claimants, Sanford C. Bernstein & Co. ("BERNSTEIN") and Alliance Capital Management L.P. ("ALLIANCE"), are Ordered and Enjoined within two (2) business days of service of this Order, to deliver to Respondent Drake's Counsel, a complete list of the names and addresses of the clients that Drake serviced at Bernstein immediately prior to his resignation.
- (b) The aforesaid List shall only be used or disclosed for the following purpose: Respondent Drake may, at his discretion, send out the previously used 'tombstone' Announcement (Claimant's Exhibit. #9) only to those approximate 40 of the above-mentioned clients to whom any such announcement was not previously sent.

III. NON-SOLICITATION

Until September 2, 2005, Respondent Drake is Ordered, Enjoined and Prohibited from soliciting any of Bernstein's clients existing as of 9/3/04, with the exception of Drake's family members, relatives, any fund or trust of which he is or was Trustee, or any Estate in which he is or was an Executor or Administrator. For purposes of this Order, "soliciting" shall mean initiating any contact or communication of any kind whatsoever for the purpose of inviting, encouraging or requesting any of the aforementioned Bernstein clients to:

- (a) Transfer accounts from Bernstein to Drake and/or Merrill Lynch;
- (b) Open any new accounts with Drake and/or Merrill Lynch.

Notwithstanding the foregoing, if any such existing client of Bernstein initiates a contact or communication with Drake, whether as a result of the announcement and phone calls preceding the T.R.O. or the announcement permitted in para. II above or for any other reason, then any discussion that ensues between such client and Drake shall NOT be deemed a violation of this Injunction Order.

IV. MISCELLANEOUS

- (a) If any person contacts Claimants Bernstein or Alliance, and inquires as to the whereabouts of Drake, then Claimants and their employees are

Enjoined and Ordered to provide such person with Drakes current office address and phone number.

(b) Neither party shall communicate any disparaging statements concerning the other.

ANY AND ALL OTHER INJUNCTIVE RELIEF REQUESTED BY CLAIMANTS OR BY RESPONDENT IN ITS CROSS-COMPLAINT, BE AND IS HEREBY DENIED."

On December 21, 2004 the Panel conducted a telephonic hearing regarding the Motion for Summary Judgment. On March 1, 2005 Respondent's Motion for Summary Judgment was granted by the Panel.

AWARD

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

- 1.) Respondent Thomas Drake's Motion for Summary Judgment is granted and all Claims for damages brought by Claimants Alliance Capital Management L.P. and Stanford C. Bernstein & Co. LLC against Respondent are dismissed with prejudice;
- 2.) The Panel's previously issued Injunctive order entered on October 1, 2004 is not intended to be affected by this ruling and shall remain in full force and effect;
- 3.) Respondent Thomas Drake's Motion to Strike (Portions) of the Affidavit of Richard Bindler is Granted;
- 4.) Claimants Alliance Capital Management and Stanford C. Bernstein & Company shall reimburse Respondent Thomas Drake for the Counter-Claim filing fee in the amount of 250.00;
- 5.) That other than Forum Fees which are specified below, and the filing fee specified above, the parties shall each bear their own costs and expenses incurred in this matter; and,
- 6.) That any relief not specifically enumerated, including punitive damages and attorney fees, is hereby 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	= \$1,250.00
Counter- Claim filing fee	= \$ 250.00

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. In this matter, the member firm is Alliance Capital Management L.P.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) Injunctive Hearing sessions x \$1,200.00	= \$4,800.00
Hearing Date: September 30, 2004 2 sessions	
October 1, 2004 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$4,800.00
 Two (2) Pre-hearing sessions with the Panel x \$ 1,200.00	 = \$2,400.00
Pre-hearing conferences: November 2, 2004 1 session	
December 21, 2004 1 session	
<hr/> Total Fees	<hr/> = \$7,200.00

The Arbitration Panel has assessed \$7,200.00 of the forum fees jointly and severally to Claimants Sanford C. Bernstein & Co., LLC, and Alliance Capital Management, L.P.

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.

Alliance Capital Management, L.P., and Sanford C. Bernstein & Co., LLC are jointly and severally assessed:

Injunctive relief surcharge	= \$2,500.00
Additional Injunctive honoraria	= \$1,250.00

Fee Summary

Claimants, Sanford C. Bernstein & Co., LLC and Alliance Capital Management, L.P. are jointly and severally liable for:

Initial Filing Fee	= \$ 1,250.00
Member Fees	= \$ 7,000.00
Injunctive Fee	= \$ 2,500.00
Additional Injunctive Honorarium	= \$ 1,250.00
Forum Fees	= \$ 7,200.00
Total Fees	= \$19,000.00
Less payments	= \$ 8,500.00
Balance Due NASD Dispute Resolution	= \$10,700.00

Respondent, Thomas Drake, is liable for:

<u>Counterclaim Filing Fee</u>	= \$ 250.00
Total Fees	= \$ 250.00
Less payments	= \$.00
Balance Due to NASD Dispute Resolution	= \$ 250.00

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

ARBITRATION PANEL

Robert B. Morton, Esq. - Public Arbitrator, Presiding Chair

Herbert S. Channick, Esq. -Public Arbitrator

Gerald A. Grossman, Esq - Non-Public Arbitrator

Concurring Arbitrators:

Robert B. Morton, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Herbert S. Channick, Esq.
Public Arbitrator

Signature Date

Gerald A. Grossman, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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ARBITRATION PANEL

Robert B. Morton, Esq. - Public Arbitrator, Presiding Chair

Herbert S. Channick, Esq. - Public Arbitrator

Gerald A. Grossman, Esq - Non-Public Arbitrator

Concurring Arbitrators:

Robert B Morton

Robert B. Morton, Esq.
Public Arbitrator, Presiding Chair

3/3/05

Signature Date

Herbert S. Channick, Esq.
Public Arbitrator

Signature Date

Gerald A. Grossman, Esq.
Non-Public Arbitrator

Signature Date

March 3, 2005

Date of Service (For NASD office use only)

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ARBITRATION PANEL

Robert B. Morton, Esq. - Public Arbitrator, Presiding Chair
Herbert S. Channick, Esq. - Public Arbitrator
Gerald A. Grossman, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Robert B. Morton, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Herbert S. Channick, Esq.
Public Arbitrator

Signature Date


Gerald A. Grossman, Esq.
Non-Public Arbitrator

02-02-2005
Signature Date

Date of Service (For NASD office use only)

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ARBITRATION PANEL

Robert B. Morton, Esq. - Public Arbitrator, Presiding Chair
Herbert S. Channick, Esq. - Public Arbitrator
Gerald A. Grossman, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Robert B. Morton, Esq.
Public Arbitrator, Presiding Chair

Herbert S. Channick

Herbert S. Channick, Esq.
Public Arbitrator

Signature Date

March 2, 2005
Signature Date

Gerald A. Grossman, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)