

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Howe Barnes Investments, Inc.

and

04-08000
Chicago, Illinois

Name of Respondents

David A. Noyes & Company
Michael R. Ochoa
Mario G. Bernardi

Nature of the Dispute: Member vs. Member and Associated Persons.

REPRESENTATION OF PARTIES

Howe Barnes Investments, Inc. ("**Claimant**") was represented by David T. B. Audley, Esq., Chapman and Cutler LLP, Chicago, Illinois.

David A. Noyes & Company ("**Respondent Noyes**"), Michael R. Ochoa ("**Respondent Ochoa**") and Mario G. Bernardi ("**Respondent Bernardi**") hereinafter referred to as ("**Respondents**") were represented by Howard J. Stein, Esq., Chicago, Illinois and Robert L. Cram, Esq., David A Noyes & Company, Indianapolis, Indiana.

CASE INFORMATION

The Statement of Claim was filed on or about November 19, 2004. Reply of Howe Barnes Investment, Inc to Counterclaim of Michael Ochoa was filed on or about February 2, 2005. Submission Agreement of Claimant Howe Barnes Investments, Inc. was signed on November 18, 2004 by James D. Nolan, Jr.

Respondents' Answer to Statement of Claim and Counterclaim of Respondent Michael R. Ochoa against Howe Barnes Investments, Inc. was filed by Respondents David A. Noyes & Company, Michael R. Ochoa and Mario G. Bernardi on or about January 12, 2005. Submission Agreement of Respondent David A. Noyes & Company was signed on January 11, 2005 by Paul E. Murin. Submission Agreement of Respondent Michael R. Ochoa was signed on January 11, 2005. Submission Agreement of Respondent Mario G. Bernardi was signed on January 11, 2005.

CASE SUMMARY

Claimant alleged that the individual Respondents breached their fiduciary duties and contractual obligations to it by illegally disclosing and misusing confidential, proprietary information. Specifically, Claimant alleged:

This wrongful conduct is in furtherance of Noyes' scheme to expand its operations by attempting to harm its direct competitor, Howe Barnes, through the improper misappropriation of Howe Barnes employees, clients and proprietary information.

Under the direction of his superiors at Noyes, Bernardi, a prior Howe Barnes Board of Directors member, Management Committee member, 5.2% shareholder, and a "control person" at Howe Barnes, to hire revenue producers ("Producers") from Howe Barnes. Noyes secretly induced the Producers to resign from Howe Barnes without notice, and bring Howe Barnes' customers to Noyes, by converting and misusing confidential information.

In doing so, Bernardi not only breached his own fiduciary duties to his former employer, but he also tortiously induced the Producers to breach their fiduciary duties and contractual obligations as well. Before their sudden departures from Howe Barnes, the Producers misappropriated Howe Barnes' confidential and proprietary customer information, and provided this information to their new employer, Noyes. By misappropriating these trade secrets and using them for an unfair competitive advantage, the Respondents violated Illinois law and the "fair and equitable principles of trade" of the NASD by-laws. In addition to this predatory raiding and misappropriation, the Respondents continue to tortiously interfere with Howe Barnes' existing and prospective customer relations through the use of Howe Barnes' confidential information, all to solicit customers for Noyes.

The pattern has continued in recent months with the hiring away of Respondent Ochoa on November 5, 2004. Ochoa, also a fiduciary through his Board membership, possesses trade secrets and other proprietary information that has allowed Noyes to continue to raid Howe Barnes by inducing Howe Barnes employees and clients to join Ochoa at Noyes.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated:

1. Bernardi and Ochoa did not have non-compete or employment contracts of any nature with Howe Barnes. Similarly, no other broker who has left Howe Barnes and joined Noyes had a non-compete or employment contracts with Howe Barnes.
2. Noyes did not solicit or recruit Bernardi to leave Howe Barnes and join Noyes. Bernardi contacted Noyes. While Bernardi is an officer of Noyes, he is not a branch office manager at Noyes, does not supervise or hire any brokers and is not responsible for broker or office

profitability. He has not solicited, recruited or hired away any Howe Barnes employee to join Noyes. He has not used any Howe Barnes confidential or proprietary information in his business at Noyes and has not disclosed, divulged or otherwise revealed any Howe Barnes confidential or proprietary information to Noyes.

3. Ochoa was dissatisfied with the direction of Howe Barnes and had numerous disagreements with Howe Barnes management and counsel over issues regarding the fixed income area at Howe Barnes that he managed. Howe Barnes management indicated it did not feel that Ochoa and his fixed income department were contributing sufficiently to Howe Barnes' bottom line. In addition, Ochoa determined that he no longer wanted to be in a management position. He approached Noyes about possible employment. He was not solicited or recruited by Noyes in any manner. He considered other firms in addition to Noyes. Contrary to the allegations of the Statement of Claim, he did not take confidential or proprietary materials when he left Howe Barnes. In fact, on the day of his resignation, he was escorted by Howe Barnes' chief compliance officer while he cleared his offices of his personal effects and he left the premises.
4. Ochoa does not have a management position at Noyes and is solely a producer. He has not solicited any other Howe Barnes confidential or proprietary information in his business and Noyes has not disclosed, divulged or otherwise revealed any Howe Barnes confidential or proprietary information to Noyes. Howe Barnes' allegation, made on information and belief, that "Ochoa has been asked to expand the bond sales force of Noyes, including the further solicitation of current and prospective Howe Barnes employees" (Statement of Claim, paragraph 30), like much of the rest of the Statement of Claim, simply has no factual basis.
5. Noyes has not "raided" Howe Barnes. Other than Bernardi and Ochoa, seven brokers have left Howe Barnes of their own and joined Noyes. None were solicited or recruited by Noyes. Each had a specific reason to leave Howe Barnes. Of those identified in the Statement of Claim, one (Gerard Phillips) had already been terminated by Howe Barnes; one (George Varney) was 78 years old and had been told by Howe Barnes management to increase production or be terminated; one (Christine Mallul) had been insulted by Howe Barnes senior management and determined to leave as a result; one (Peggy Moore) felt pressured and threatened to leave because her production was not deemed high enough to meet Howe Barnes' management's pronouncement the "\$250,000 pays the rent"; one (Azita Aminian) had been Ochoa's business partner for more than 15 years and did not want to stay at Howe Barnes if Ochoa left, even if she did not rejoin him at Noyes; and two (Jeffrey Herr and Maria McPhail) left Howe Barnes because Howe Barnes changed their employee terms.

In his Counterclaim, Respondent Ochoa alleged among other things that Claimant did not pay him management compensation for the months of October and for that part of the month of November that he was employed by Claimant.

RELIEF REQUESTED

Claimant requested that the Arbitration Panel:

- a. Award an amount of compensatory damages of \$1,357,017, representing one-half of the trailing 12-month production of Varney, Mallul, Herr, McPhail, Moore and Ochoa, with the exact amount to be determined at hearing;
- b. For punitive damages in an amount of at least \$600,000; and
- c. For Howe Barnes' attorneys' fees and costs and costs of this arbitration.

In its Reply of Howe Barnes Investment, Inc to Counterclaim of Michael Ochoa, Claimant requested judgment be entered in its favor and against Michael R. Ochoa and that it be awarded its costs in this matter, together with any other relief as the Panel deems proper.

Respondents requested that the claims asserted against them be dismissed in their entirety; that judgment be entered in their favor and against Claimant; and that costs be assessed against claimant.

Counterclaimant Michael R. Ochoa requested that judgment be entered in his favor and against Howe Barnes in the total amount of at least \$33,500; that costs be fully assessed against Howe Barnes; and that the Panel award him such other relief as it deems proper.

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(s) remain on file with the NASD Dispute Resolution (the "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. The claims asserted in the Statement of Claim are denied, the undersigned arbitrators find in favor of Respondents.
2. Howe Barnes Investments, Inc. is liable for and shall pay to Michael R. Ochoa the sum of \$6,440.00 (Six Thousand Four Hundred Forty Dollars and No Cents) representing management compensation for the month of October 2004 and a portion of November 2004 as compensatory damages

3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. 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, not specifically awarded or otherwise provided for above.

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	= \$2,000.00
Counter claim filing fee	= \$175.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) are Howe Barnes Investments, Inc. and David A. Noyes & Company.

Member surcharge	\$	2,800.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	5,000.00
Total Member Fees	\$	8,550.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers.. 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:

1	Pre-hearing session(s) with Panel	@	1,200.00	\$	1,200.00
	April 5, 2005	1	session		
17	Hearing sessions	@	1,200.00	\$	20,400.00
	November 7, 2005	2	sessions		

November 8, 2005	2	sessions	
November 9, 2005	2	sessions	
November 10, 2005	2	sessions	
November 11, 2005	1	session	
February 27, 2006	2	sessions	
February 28, 2006	2	sessions	
March 1, 2006	2	sessions	
March 2, 2006	2	sessions	
Total Forum Fees			\$ 21,600.00

The Arbitration Panel has assessed \$10,800.00 of the forum fees to Howe Barnes Investments, Inc..
The Arbitration Panel has assessed \$10,800.00 of the forum fees to David A. Noyes & Company.

Fee Summary

Claimant, Howe Barnes Investments, Inc., is liable for:

Initial Filing Fee	= \$	2,000.00
Member Fees	= \$	8,550.00
<u>Forum Fees</u>	= \$	10,800.00
Total Fees	= \$	21,350.00
<u>Less payments</u>	= \$	-11,750.00
Balance Due NASD Dispute Resolution	= \$	9,600.00

Respondent, David A. Noyes & Company, is liable for:

Member Fees	= \$	8,550.00
<u>Forum Fees</u>	= \$	10,800.00
Total Fees	= \$	19,350.00
<u>Less payments</u>	= \$	-8,550.00
Balance Due NASD Dispute Resolution	= \$	10,800.00

Respondent, Michael R. Ochoa, is liable for:

Counterclaim Filing Fee	= \$	175.00
Total Fees	= \$	175.00
<u>Less payments</u>	= \$	-775.00
Balance to be refunded by NASD Dispute Resolution	= \$	- 600.00

All balances are due to NASD Dispute Resolution

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ARBITRATION PANEL

Herbert S. Channick, Esq. - Public Arbitrator, Presiding Chair
Don Muyskens, Esq. - Public Arbitrator
Carmen P. Michelotti - Non-Public Arbitrator

Concurring Arbitrators:

Herbert S. Channick
Herbert S. Channick, Esq.
Public Arbitrator, Presiding Chair

March 6, 2006
Signature Date

Don Muyskens, Esq.
Don Muyskens, Esq.
Public Arbitrator

Signature Date

Carmen P. Michelotti
Carmen P. Michelotti
Non-Public Arbitrator

Signature Date

3/6/06
Date of Service (For NASD office use only)

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Carmen P. Michelotti - Non-Public Arbitrator

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Public Arbitrator, Presiding Chair

Signature Date

Don Muyskens

Don Muyskens, Esq.
Public Arbitrator

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Concurring Arbitrators:

Herbert S. Channick, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Don Muyskens, Esq.
Public Arbitrator

Signature Date

Carmen P. Michelotti

March 06, 2006

Carmen P. Michelotti
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)