

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Richard Russo

Claimant

vs.

Bateman Eichler, Hill Richards,  
Inc., Steven Brixey, Paul Smith  
and Susan West

Respondents

CASE NO. 87-00847

SUMMARY OF ISSUES

Claimant filed this claim with the NASD on June 17, 1987 for wrongful termination, breach of contract, breach of the implied covenant of good faith and fair dealing, and interference with business relationship in connection with Claimant's employment as an account executive. Specifically, Claimant alleged that he was terminated by BEHR based upon a complaint by a public customer alleging that Claimant engaged in unauthorized and unsuitable option transactions; that the allegations in the complaint were and are specifically denied by Claimant and that Claimant informed Respondents of his denial; that Respondents did not adequately investigate or corroborate the allegations in the complaint; and that Respondents reached a settlement agreement concerning the complaint and terminated Claimant without good cause. Claimant further alleged that the Form U-5 and attachment filed by Respondents upon Claimant's termination is misleading and constitutes a continuing interference with Claimant's business relationship.

Respondents denied the allegations and maintained that Claimant's employment was at the will of both parties and that either party could terminate the relationship without cause, and that no employment contract could therefore have been breached. Respondents further maintained that the public customer complaint was investigated, including providing Claimant with an opportunity to present his side of the story; that Claimant was terminated for violating industry rules and standards of conduct; and that the Form U-5 and attachment is accurate and is required by the NYSE, NASD, and other regulatory bodies.

Respondent Bateman Eichler, Hill Richards, Inc. filed a counterclaim for indemnification of the settlement of the public customer complaint and alleged that the damages were caused by the improprieties and wrongful conduct of Claimant.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages as amended at the hearing in the amount of \$100,000.00 for lost commission income; \$83,000.00 for the cancelled Note; \$120,000.00 for the loss sustained on the sale of Claimant's home;

\$2,000.00 for the fourth quarter pension plan contribution; \$1,500 for his anticipated year-end bonus; \$10,000.00 for two trips earned by Claimant and cancelled upon his termination; \$20,000.00 for attorneys' fees; and that the panel direct Respondents to file an amendment to the Form U-5 attachment which deletes the references to the allegations concerning unauthorized and unsuitable trading.

Respondents requested dismissal of the claim and costs.

CounterClaimant requested indemnification in the amount of \$55,838; interest at seven percent from December 23, 1986; attorneys' fees and costs.

#### **DAMAGES AND RELIEF AWARDED**

On November 2 and 3, 1989 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant and by the Respondents. The hearing was held in Beverly Hills, California and lasted five sessions. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Bateman Eichler, Hill Richards, Inc. is hereby solely liable for and shall pay to Claimant the sum of Three Thousand, Five Hundred Dollars and No Cents (\$3,500.00).

2. Respondent Bateman Eichler, Hill Richards, Inc. is hereby directed to elect within 30 days of service of this award to:

a. File a Supplement/Amendment to the Form U-5 Attachment previously filed in January, 1987 in connection with the termination of Claimant, containing the following language:

##### **"SUPPLEMENT/AMENDMENT TO THE FORM U-5 ATTACHMENT"**

**"THIS AN SUPPLEMENT/AMENDMENT TO THE FORM U-5 ATTACHMENT IS FILED PURSUANT TO THE REQUEST BY A PANEL OF ARBITRATORS CONVENED ON NOVEMBER 2 AND 3, 1989 IN THE MATTER OF ARBITRATION BETWEEN RICHARD RUSSO VS BATEMAN EICHLER, HILL RICHARDS, INC., et. al., IN ORDER TO CLARIFY AND CONFORM THE PREVIOUSLY FILED FORM U-5 (JANUARY 1987) TO THE ARBITRATION PANEL'S FINDINGS:**

1. The Panel made no determination concerning the merits of the complaint asserted by the public customer; furthermore, the Panel recognized and upholds the authority of a broker/dealer to make informed business decisions in an effort to maintain industry standards, customs, and fair practice; however,

2. The Panel found the investigation of the allegations asserted by the public customer was not sufficient to support the conclusion that Russo exposed the firm to substantial liability, and that the allegations of unsuitable and unauthorized trading were likewise not supported or corroborated by evidence presented at the hearing. Specifically, the Panel considered testimony and evidence presented at the arbitration hearing that

the public customer was approved by BEHR on two occasions as being suitable for options trading; that the public customer had previously engaged in transactions (including an account maintained with a discount brokerage firm) similar in size and nature to the transactions complained of; and that the complaint was asserted after the public customer suffered trading losses including incurring a debit balance; and

3. The decision to negotiate a settlement of the public customer complaints was solely that of BEHR, and the counterclaim asserted by BEHR at the arbitration hearing for indemnification was dismissed."

b. If Respondent Bateman Eichler, Hill Richards, Inc. elects not to file the Supplement/Amendment to the Form U-5 Attachment within 30 days of service of this award, it is hereby solely liable for and shall pay to Claimant the sum of Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00) representing continuing damages.

3. All claims against Respondents Steven Brixey, Paul Smith and Susan West are dismissed.

4. The counterclaim is hereby dismissed.

5. The parties shall each bear their respective costs including attorneys' fees.

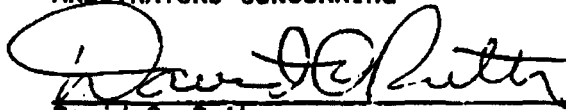
6. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. ("NASD") Code of Arbitration Procedure, the NASD shall retain the \$500.00 filing fee previously deposited by the Claimant.

#### OTHER ISSUES

The parties stipulated to the execution and service of the award in counterpart copies.

DATE SERVED: 12/08/89

ARBITRATORS CONCURRING

  
David C. Ruth

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Roberta Haft

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William C. Richardson

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