

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In The Matter of The Arbitration Between

Dean Witter Reynolds, Inc.

Claimant/
Counter-
Respondent

Award

vs.

NASD #88-01141

Mark Neckameyer and
Theresa Neckameyer

Respondents/
Counter-
Claimants

SUMMARY OF ISSUES

Claimant Dean Witter Reynolds, Inc. filed this action on April 11, 1988 against Respondents for recovery of a debit balance due and owing and for breach of a promissory note. Specifically, claimant alleged that Respondents delivered a personal check payable to Claimant in payment for various purchases made in their account and that the check was returned for insufficient funds. Claimant alleged that Respondent Mark Neckameyer then signed a promissory note which obligated him to pay the amount of the then existing deficiency in the account. Claimant further alleged that as a result of Respondents' failure to honor the returned check or the terms of the promissory note, and pursuant to the terms of the Customer's Agreement, Claimant liquidated the securities held in the account in order to reduce the debit balance, resulting in a net debit balance.

Respondents denied the allegations and maintained that Claimant waived and therefore is estopped from enforcing any contractual provision that would otherwise allow it to demand payment of any deficiency, because a purchase and sale transaction was completed prior to the check being offered for clearance. Respondents maintained that they are not liable for the alleged tendering of a check against insufficient funds because the funds were available at the time the check was drawn against a general assets fund account they maintained at another brokerage firm, and that as a result of the market forces on October 19, 1987 their general assets fund depreciated below the amount of the drawn check. Respondents further maintained that Mark Neckameyer's signature on the promissory note was forced and extorted under duress and threat of criminal prosecution and is unenforceable and void. Respondents counter-claimed against Claimant and alleged that Claimant violated its customer agreement with Respondents for failing to place two option orders properly on October 19 and 20, 1987, respectively, and that Claimant placed these orders at a higher amount with the interest to defraud Respondents in order to protect its own interests and the interests of its large corporate customers at the expense of

individual trades. Respondents further alleged that Claimant violated state laws in the attempt to collect the alleged debt owed to them from Respondent by telephoning directly Respondent Mark Neckameyer's employer regarding the debt and engaged in the solicitation of the employer of monies to pay off the alleged debt, which resulted in the discharge of Respondent Mark Neckameyer from his position.

Claimant replied to the counter-claims and maintained that the orders placed by Respondents on October 19 and 20, 1987 were executed properly and that Respondents were advised that the market was very volatile when they placed the orders. Claimant further maintained that Respondent Mark Neckameyer indicated that he could obtain an advance from his employer in an amount sufficient to cover the deficiency in the account, and provided the phone number of his employer and urged Claimant to call and confirm the foregoing; Claimant did telephone Respondent Mark Neckameyer's employer but was informed by the employer that they would not make such an advance.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages of \$33,588.95 plus accrued interest, costs and attorneys' fees, and dismissal of the counter-claim. Respondents requested dismissal of the claims, costs and attorneys' fees, and counter-claimed for punitive damages in the amount of \$3 million and for unspecified damages for loss of earnings according to proof.

DAMAGES AND RELIEF AWARDED

On June 20, 1989 in a single-session hearing in Los Angeles, California, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Dean Witter Reynolds, Inc. on April 5, 1988 and by Respondents Mark Neckameyer and Theresa Neckameyer on September 20, 1988. 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. Respondents Mark Neckameyer and Theresa Neckameyer are hereby jointly and severally liable for and shall pay to Claimant Dean Witter Reynolds, Inc. the sum of Thirty-Three-Thousand, Five-Hundred, Eighty-Eight Dollars and Ninety-Five Cents (\$33,588.95) representing the debit balance due and owing.

2. Respondents are further jointly and severally liable for and shall pay to Claimant accrued interest at the rate of ten (10) percent on the sum of \$33,588.95 from the period of October 30, 1987 to June 20, 1989.

3. Pursuant to the terms and conditions of the Promissory Note attached to the Statement of Claim as Exhibit "D" and the testimony at the hearing, Respondents are jointly and severally liable for and shall pay to Claimant the sum of Seven-Thousand, Five-Hundred Dollars and Zero Cents (\$7,500.00) representing attorneys' fees incurred.

4. Each and every counter-claim is hereby dismissed.

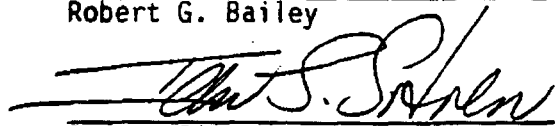
5. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. (NASD) Code of Arbitration Procedure, the NASD shall retain the \$ 400.00 filing fee previously deposited by the Claimant. In accordance with Section 43, Respondents are jointly and severally assessed the sum of \$400.00 representing the filing fee and shall reimburse Claimant directly.

OTHER ISSUES

Respondents Mark Neckameyer and Theresa Neckameyer, duly notified of the arbitration hearing in accordance with Section 26 of the National Association of Securities Dealers, Inc., Code of Arbitration Procedure ("NASD Code") did not appear at the hearing but are subject to the jurisdiction of this forum pursuant to Section 12(a) of the NASD Code and the arbitrators proceeded with the hearing and decision in accordance with Section 29 of the NASD Code.

ARBITRATORS CONCURRING

Robert G. Bailey



DATE SERVED: AUGUST 10, 1989 Ian L. Sitren

Jack M. Garfinkel