

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

J.C. Bradford & Company

Claimant

and

Bert L. Frazier

Respondent

A W A R D
88-01154

CASE SUMMARY

In a claim filed with the NASD on April 20, 1988, Claimant J.C. Bradford & Company ("J.C. Bradford") alleged that Respondent Bert Frazier ("Frazier") incurred a margin debit in his securities account which was opened and maintained at J.C. Bradford. The margin debit of \$47,326.95 occurred in Frazier's account as a consequence of a series of listed put and call options transactions placed and executed at the order of Frazier during the last week in August 1982 and the last week in September 1982. J.C. Bradford demanded payment of the debit and when Frazier refused, the positions in Frazier's account were liquidated leaving an unsecured debit balance of \$15,721.44.

Frazier denied liability for the debit balance created in his account and alleged the debit balance was caused by J.C. Bradford's negligence in failing to properly follow Frazier's instructions on the sale of certain option contracts.

Frazier asserted a counterclaim for damages resulting from the alleged breach of fiduciary duty owed him by Bradford which arose from the premature liquidation of the Honeywell November 80 calls based on J.C. Bradford's recommendation.

J.C. Bradford denied any liability for negligence and asserted that the counterclaim should fail because Regulation T required liquidation of Frazier's positions due to non-payment. Bradford further asserted that Frazier's counterclaim was barred by the affirmative defenses of waiver, ratification, assumption of risk, contributory negligence and laches.

RELIEF REQUESTED

J.C. Bradford requested damages of \$15,721.44, accrued interest to date of \$4,533.93, plus additional margin interest and also requested that the costs and fees of the arbitration be assessed against Frazier.

Frazier requested dismissal of the claim and an award of \$197,500.00 on his counterclaim. J.C. Bradford requested dismissal of the counterclaim.

PROCEDURAL HISTORY

J.C. Bradford originally filed suit against Frazier in the Chancery Court for Madison County, Tennessee. Frazier moved to dismiss the suit on jurisdictional grounds which motion was denied. Thereafter, Frazier filed a motion to compel arbitration. A consent order was entered through the parties' respective counsel and the court proceedings were stayed on the grounds that the matter in controversy was subject to arbitration.

This matter was originally heard by panel of arbitrators in New Orleans, Louisiana. An award was rendered denying Bradford's claim and awarding Frazier damages on his counterclaim. J.C. Bradford filed a motion to vacate with the United States District Court for the Eastern District of Louisiana. Judge Marcel Livaudais, Jr. vacated the award and remanded the matter for a new arbitration hearing by order dated February 5, 1988.

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Thereafter, this matter was submitted to the undersigned panel of arbitrators which was convened in Nashville, Tennessee.

AWARD

On Wednesday, October 11, 1989 in Nashville, Tennessee during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on December 3, 1984 by Charles T. Malott, General Partner on behalf of Claimant J.C. Bradford & Co. and on December 17, 1985 by Respondent Bert L. Frazier.

The arbitration panel, having considered the pleadings, and the parties' post-hearing submissions filed at the request of the panel has decided in full and final resolution of the issues submitted for determination as follows:

J.C. BRADFORD'S CLAIM

1. J.C. Bradford's claim asserted against Frazier shall be and is hereby dismissed in its entirety;

FRAZIER'S COUNTERCLAIM

2. J.C. Bradford is liable for and shall pay to Frazier, on his counterclaim, the sum of \$22,812.76 inclusive of interest;

3. The parties shall each bear their respective costs and expenses including any attorney's fees incurred in this matter;

4. Pursuant to Section 44 of the NASD Code of Arbitration Procedure, J.C. Bradford shall pay to the NASD the non refundable sum of \$500.00; and

5. Pursuant to Section 43(b) of the Code of Arbitration Procedure, J.C. Bradford is assessed and shall pay to the National Association of Securities Dealers, Inc. the sum of \$1,000.00 as forum fees.

By the Panel

Dated: January 26, 1990

/S/ Stanley Snodgrass, Esq.
Presiding Chairman

Dated: January 29, 1990

/S/ Daniel Eugene Bivins III

Dated: January 26, 1990

/S/ John Thomas Deutsch

Date served: 3-14-90