

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Jim Jensen and
J.J. Consulting Corporation

vs.

Name of Respondent/
Third Party Claimant/Counterrespondent

NASD Arbitration
No. 91-01194

Bateman Eichler, Hill Richards, Inc.

vs.

Name of Third Party Respondents/Counterclaimants

Lee Edgar Mikles
Mark Richard Miller

REPRESENTATION

For Claimants: Henry N. Jannol, Esq., Los Angeles, California

For Respondent: Jon L. Rawinski, Esq., Kindel & Anderson, Los Angeles,
California

For Third Party Respondents: Philip G. May, Esq., Kennedy & Wilson, P.C.,
Phoenix, Arizona

CASE INFORMATION

Statement of Claim filed: April 16, 1991

Claimants' Submission Agreement signed on: March 21, 1991

Statement of Answer and Third Party Claim filed by Respondent on: July 15,
1991

Respondent's Submission Agreement signed on: July 22, 1991

Statement of Answer and Counterclaim filed by Third Party Respondents on:
September 3, 1991

Third Party Respondents Lee Edgar Mikles (Mikles) and Mark Richard Miller (Miller) did not submit Submission Agreements. However, they appeared at the hearing and are subject to National Association of Securities Dealers, Inc. (NASD) jurisdiction in accordance with Sections 8 and 12 of the Code of Arbitration Procedure.

HEARING INFORMATION

Prehearing Conference(s) Date(s) Sessions: March 6, 1992 (one session)
April 1, 1992 (one session)

Hearing Dates/Sessions: June 1, 1992 (two sessions)
June 2, 1992 (two sessions)
June 3, 1992 (two sessions)
June 4, 1992 (two sessions)
June 5, 1992 (two sessions)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimants alleged material omissions with respect to investments in Gradco securities and STOR Furnishings International stocks (STOR).

Respondent Bateman Eichler, Hill Richards, Inc. (BEHR) deny that Claimants are entitled to any relief or damages with respect to these investments. In a third party claim for indemnity, BEHR asserted that should the panel find that Claimants are entitled to damages or any relief, such damage would have been caused by negligence and/or mismanagement and/or breach of duties owed by Third Party Respondents to Claimants. In addition, BEHR alleged breach of contract, unjust enrichment and breach of promissory note dated June 12, 1989 with respect to Third Party Respondent Mikles. BEHR also alleged breach of contract, breach of promissory note dated June 12, 1989 with respect to Third Party Respondent Miller.

Third Party Respondents Mikles and Miller denied any liability with respect to BEHR's claim for indemnity. Mikles denied liability under his promissory note, denied BEHR's allegations and in his counterclaim alleged breach of contract and alleged that his employment was constructively terminated without cause. Miller denied liability under his promissory note, denied BEHR's allegations and in his counterclaim alleged breach of contract and alleged that his employment was constructively terminated by BEHR's refusal to pay him compensation to which he was entitled by contract, and by BEHR's refusal to discontinue its front running trading practices.

BEHR alleged that Mikles' and Miller's counterclaims have no basis in fact or law and requested that the panel issue an Award denying the counterclaims in their entirety and granting BEHR's third party claims.

RELIEF REQUESTED

Claimants requested:

1. Damages measured as follows: (a) \$25,421 principal lost on the Gradco transactions; and (b) prejudgment interest measured by the performance of the Priority Management Inc. Fund II;
2. Punitive damages of \$100,000;
3. Damages measured as follows: (a) \$83,398 principal lost on the STOR transactions; and (b) prejudgment interest measured by the performance of the Priority Management Inc. Fund II;
4. Punitive damages of \$250,000; and
5. Costs of the arbitration

Respondent BEHR requested:

1. A declaration that any damages awarded to Jim Jensen and/or J.J. Consulting in the Jensen claim must be paid directly, completely and exclusively by Mikles and/or Miller and not by BEHR;
2. Damages against Mikles in the amount of \$54,133.34, plus interest, costs, and attorney's fees for non-payment of monies owed to BEHR pursuant to a promissory note;
3. Damages against Mikles in the amount of \$100,000 for money had and received and unjust enrichment;
4. Damages against Miller in the amount of \$12,266.67, plus interest, costs, and attorney's fees for non-payment of monies owed to BEHR pursuant to a promissory note;
5. Damages against Mikles and Miller in an amount to be established at the hearing for breach of the agreement involving the sale of Mikles' retail book to BEHR; and
6. Interest, including prejudgment interest, attorneys' fees and BEHR's costs of the arbitration

Third Party Respondents Mikles and Miller requested:

1. Damages against BEHR in the amount of \$85,000, plus interest, costs, and attorneys' fees resulting from BEHR's constructive termination of Mikles' employment and breach of its employment contract with Mikles;

2. Damages against BEHR in the amount of \$17,633.00, plus interest thereon from November 30, 1990, plus costs and attorneys' fees, for BEHR's breach of its employment contract with Miller; and
3. All costs and attorneys' fees incurred in their successful defense of BEHR's third party claim

OTHER ISSUES CONSIDERED & DECIDED

During a prehearing telephonic conference on March 6, 1992, the Chairperson, on behalf of the panel, heard arguments from the parties' counsel regarding Claimants' request for severance of several claims and counterclaims filed by Third Party Claimant and Third Party Respondents. The Chairperson ruled in favor of bifurcating the hearing with respect to the above-captioned matter.

Counsel for the parties stipulated that the panel, consisting of a majority of arbitrators not from the securities industry, hear and determine both the customer related claims and industry related claims.

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 originals remain on file with the National Association of Securities Dealers, Inc. (NASD).

AWARD

After considering the pleadings, the testimony and the evidence presented during the first part of the above-captioned bifurcated hearing, conducted June 1st and 2nd, 1992, in four sessions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claim of Claimants Jim Jensen and J.J. Consulting Corporation against BEHR for the principal lost on both the Gradco and STOR transactions, for prejudgment interest, and for punitive damages is dismissed.
2. The first claim for relief of the third party claim by BEHR against Mikles and Miller for indemnity for any damages that are awarded to Claimants is dismissed for the reason that no damages were awarded to said Claimants.
3. Claimants and Respondent shall each bear their respective costs including attorney's fees with respect to the first part of this proceeding.

After considering the pleadings, the testimony and the evidence presented during the second part of the above-captioned bifurcated hearing, conducted June 3rd, 4th and 5th, 1992, in six sessions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

BEHR's third party claims against Mikles and Miller are granted with the following breakdown:

1. Third Party Respondent Mikles is liable for and shall pay to BEHR, the sum of \$54,133.34 as the principal balance due and owing on his promissory note dated June 12, 1989, plus accrued interest in the sum of \$7,904.95.
2. Third Party Respondent Mikles is liable for and shall pay to BEHR, the sum of \$5,413.33 for attorney's fees as provided for by the promissory note dated June 12, 1989.
3. Third Party Respondent Mikles is liable for and shall pay to BEHR, the sum of \$100,000 representing the amount of his unjust enrichment resulting from the failure of the consideration paid to him by Third Party Claimant for his book of business, plus the further and additional sum of \$14,602.74 as accrued interest.
4. Third Party Respondent Miller is liable for and shall pay to BEHR, the sum of \$12,266.67 as the principal balance due and owing on his promissory note dated June 12, 1989, plus accrued interest in the sum of \$1,757.66.
5. Third Party Respondent Miller is liable for and shall pay to BEHR, the sum of \$1,226.66 for attorney's fees as provided for by the promissory note dated June 12, 1989.
6. Third Party Respondents Mikles and Miller are jointly and severally liable for and shall pay to BEHR the sum of \$1,250 as reimbursement for BEHR's filing fee and hearing session deposit.
7. All counterclaims by Third Party Respondents Mikles and Miller are dismissed.
8. Respondent and Third Party Respondents shall each bear their respective costs with respect to the second part of this proceeding.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed with respect to the first part of the bifurcated hearing: The NASD shall retain the \$750 hearing session deposit previously made by the Claimants as an assessment of forum fees for one session.

Forum fees for the March 6, 1992 prehearing conference are assessed against Claimants in the amount of \$300, calculated as follows: One prehearing session times \$300/session.

Forum fees for the first two days of hearing are to be split between the Claimants and Respondent and are calculated as follows:

Total fees assessed		
four sessions times \$750/session	=	\$3,000.00
Claimants' share (50%)	=	\$1,500.00
Credit for hearing deposit	=	\$ 750.00
Balance due	=	\$ 750.00
Respondent BEHR's share (50%)	=	\$1,500.00
Balance due	=	\$1,500.00

Pursuant to Section 44c of the Code of Arbitration Procedure, the following forum fees are assessed with respect to the second part of the bifurcated hearing: The NASD shall retain the \$750 hearing session deposit previously made by the Respondent, as well as the \$750 hearing session deposit made by the Third Party Respondents.

Forum fees for the April 1, 1992 prehearing conference are assessed against BEHR in the amount of \$300, calculated as follows: One prehearing session times \$300/session.

Forum fees for the remaining three days of hearing are assessed against:

Third Party Respondent Mikles, solely, in the amount of \$3,000, calculated as follows: Six hearing sessions times \$750/session, minus the \$750 to be reimbursed to BEHR plus \$750 credit for Third Party Respondents' hearing session deposit.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Name

Public/Industry

George M. Wiener, Esq.
David Menaker
Roberta Haft

Public Arbitrator
Public Arbitrator
Industry Arbitrator

Concurring Arbitrators' Signature

George M. Wiener, Esq.

David Menaker
David Menaker

Roberta Haft

Served August 24, 1992

Date of Decision: 8/20/92