

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Howard Parnes

92-00066

Name of Respondent(s)

M&T Discount Brokerage Services, Inc.

REPRESENTATION

For Claimant Howard Parnes: Steven G. Storch, Esq. of the law firm of Storch Amini and Munves, P.C.

For Respondent M & T Discount Brokerage Services, Inc.: Charlotte Moses Fischman, Esq. of the law firm of Kramer, Levin, Nessen, Kamin and Frankel.

CASE INFORMATION

Statement of Claim filed: January 8, 1992.

Affidavit of Howard Parnes filed on: April 29, 1992.

Claimant's Submission Agreement signed on: January 6, 1992.

Statement of Answer filed by Respondent M & T Discount Brokerage Services, Inc. on: March 14, 1992.

Respondent M & T Discount Brokerage Services, Inc.'s Submission Agreement signed on: February 28, 1992.

Motion to Dismiss filed on: February 28, 1992.

Reply Affidavit filed by Respondent on: May 7, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: October 8, 1993 / One Session
 December 14, 1993 / Two Sessions

Hearing Location: NASD offices located in New York City, NY.

CASE SUMMARY

Claimant alleged this proceeding arises from Respondent's willful disregard of precise written and oral instructions in connection with a certain securities brokerage account maintained by Respondent for Claimant Howard Parnes ("Parnes") and pursuant to those instructions, Respondent was to wire transfer the proceeds from the sale of certain British Sterling Treasury bills in that account directly to Parnes' personal money market account with Manufacturers Hanover Trust in Scarsdale. Claimant further alleged instead, Respondent has refused to release those funds, and frozen them in Parnes' checking account with its affiliated bank, without his consent and Respondent has no authority to do so under any of the terms of its brokerage account with Parnes, or applicable broker-dealer law and accordingly, Parnes seeks the funds' immediate release, with interest from October 17, 1991 (the T-Bills' date of maturity) to the date of such release.

Respondent denied the allegations contained in the Statement of Claim. Respondent asserted a Motion to Dismiss the arbitration proceeding commenced by Claimant Parnes, on the ground that the subject matter of the dispute is not arbitrable before the NASD as the Parnes' claim does not concern any conduct by or transaction with M&T Discount Brokerage Services, Inc. or the brokerage account maintained by Parnes with M&T Discount Brokerage Services, Inc., rather, Parnes complains of alleged conduct by Manufacturers and Traders Trust Company (sometimes referred to as "M&T Bank"), a New York banking corporation which is the parent company of M&T Discount Brokerage Services, Inc., and M&T Bank's exercise of a right of set-off with respect to funds in a money market demand deposit checking account.

Respondent further maintained M&T Discount Brokerage Services, Inc. played no role in Parnes' purchase of certain British Sterling Treasury Bills or the disposition of their proceeds on maturity, as asserted in Parnes' Statement of Claim and M&T Discount Brokerage Services, Inc. has never executed foreign denominated treasury bill transactions.

In response to the Motion to Dismiss the Claimant maintained that Michael Maher of M & T Bank recommended that he transfer his assets from the Bank's real estate division to M & T Brokerage Discount Services, Inc. the Bank's wholly owned subsidiary, in order to earn a better rate of return on his investments and in that regard the Claimant executed the Brokerage agreement upon which he commenced the proceeding. Claimant further maintained the sales representative from M & T Discount Brokerage Services, Inc. held himself out to be a securities broker only and represented that all of his securities investments would be traded through M & T Discount Brokerage Services, Inc. Claimant further alleged about the time of the transaction in question he was a principal on a certain non-performing loan from M & T Bank for which the Bank had personal guaranty protection and M & T Bank has commenced litigation against him and his business partners on that loan and guaranty and Claimant alleged upon information and belief M & T Bank improperly seized the proceeds from his liquidation of those holdings in an attempt to offset them against the loan and guaranty upon which it has sued and the representations of the account executive and Mr. Maher were false and made with the intent to deceive the Claimant.

In response, the Respondent maintained M&T Bank's confirmation slips, demand deposit account statements and treasury confirmations are clear and unambiguous that the transactions in question were effected through M&T Bank. Respondent further maintained the Claimant submits no evidence to support his conclusion that M&T Bank's exercise of a banker's right of set-off against a borrower in default is an issue for the NASD.

RELIEF REQUESTED

Claimant requested damages in the amount of \$938,025.00 plus interest from the date of seizure and a denial of the Respondent's Motion to Dismiss.

Respondent requested a dismissal of the Statement of Claim plus attorneys' fees and costs and that the arbitrators grant the Motion to Dismiss.

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 Respondent's Motion to Dismiss the Claimant's Statement of Claim at the conclusion of the Claimant's direct case which consisted of the Claimant calling two of his own witnesses and two of Respondent's

witnesses is granted in all respects.

2. The Claimant's request for relief is denied in all respects.
3. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

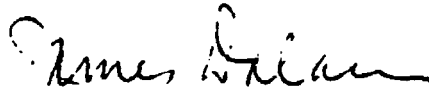
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

3 sessions x \$1,000.00 = \$3,000.00 less Claimant's hearing session deposit (\$1,000.00) = net \$2,000.00 due.

Forum Fees Assessed Against:

The Claimant be and hereby is liable and shall pay to the NASD the sum of \$2,000.00 representing the balance of the forum fees due and owing to the NASD.

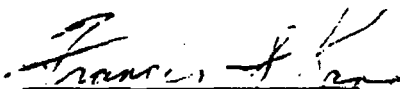
ARBITRATORS' SIGNATURE



James Dolan, Esq.
Public Arbitrator



David E. Robbins, Esq.
Public Arbitrator



Francis J. Kane
Industry Arbitrator