

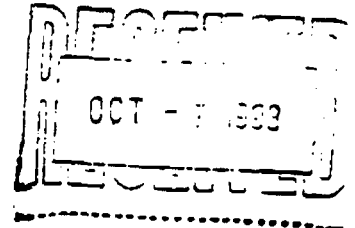
N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Charles M. Russell  
First American Bank  
Essenbee & Co.  
First Institutional Securities Corp.



Case No. 92-00549

Name of Respondent(s)

A. Webster Dougherty Inc.  
Allison Rosenblum & Hannahs  
Masters Financial Group Inc.

**REPRESENTATION**

For Claimants, Charles M. Russell ("Russell"): pro se; First American Bank ("FAB") and Essenbee and Company ("Essenbee"): Stuart B.A. Webb of First American; and, First Institutional Securities Corporation ("FISC"): Robert M. Axelrod, Esq. of Sills, Cummis, Zuckerman.

For Respondents, A Webster Dougherty, Inc. ("AWD"): Ronald H. Surkin, Esq. of Blank Rome Comisky and McCauley; Allison Rosenblum and Hannahs ("ARH"): Kenneth R. Shemin, Esq. of The Rose Law Firm; and, Masters Financial Group, Inc. ("Masters"): Thomas S. Stone, Esq. of Dover and Dixon.

**CASE INFORMATION**

Statement of Claim filed: March 5, 1992. Claimants' Submission Agreements signed: January 31, 1992 by Russell; February 4, 1992 by David D. Wolfe on behalf of FAB and Essenbee; and, on January 30, 1992 by Stanley Goldberg on behalf of FISC.

Respondent AWD's, Statement of Answer and Third Party Claims filed: May 28, 1992. AWD's Submission Agreement signed: May 26, 1992 by James J. Dotzman.

Third Party Respondent Masters' Statement of Answer filed: July 21, 1992.  
Masters' Submission Agreement signed: March 2, 1993 by Gandy Baugh.

Third Party Respondent ARH's Statement of Answer filed: June 1992. ARH's  
Submission Agreement signed: March 2, 1993 by Kenneth R. Shemin.

### HEARING INFORMATION

On March 1 and 2, April 26 and 27, and July 27 and 28, 1993 in Fort  
Lauderdale, Florida, hearings lasting 11 sessions were conducted.

### CASE SUMMARY

Claimants alleged that Respondent AWD misdescribed as a Z-bond securities which were actually CAB's sold by AWD to FISC; that FISC then sold the securities to Russell, individually, and to Essenbee for the Marianna R. Love Family Trust Account at FAB; that AWD's description of the securities failed to include material features of the bonds and delivery was not made consistent with the confirmation; that the bonds delivered to Claimants were worth substantially less than represented; that the amount paid for the bonds was \$134,960.77 when the actual market value was less than \$10,000.00; and, that AWD is responsible for the loss sustained.

Respondent, AWD, denied all allegations of wrongdoing and alleged that it did not sell any securities to or engage in any transactions with Claimants, Russell, FAB, Essenbee or FISC, and, therefore, AWD had no duty or obligation to the Claimants; that AWD sold the securities to Broadway Financial Investment Services ("Broadway"); that AWD is not aware that FISC and Broadway are the same entity, and no allegation to that effect is made in the Statement of Claim; and, that AWD did not commit any intentional fraud in connection with this transaction.

Respondent/Third Party Claimant, AWD, filed a third party claim against ARH, Masters and John D. Clarke ("Clarke") and alleged that it also was the victim of a misdescription upon its purchase of the security; that Masters is the successor in interest to ARH; and, that if AWD is liable to any of the Claimants it seeks to hold the third parties responsible.

Third Party Respondent, Masters, denied all allegations of wrongdoing and alleged that it has not engaged in any transaction with the Claimants, Respondents or other Third Party Respondents with regard to the securities in question; that Masters has not merged with, acquired the assets of, or otherwise engaged in any transaction for the purpose of becoming the successor in interest or to assume any obligation of ARH; and, therefore, a claim against Masters is unfounded.

Third Party Respondent, ARH, denies that it made any misrepresentations and/or omissions of material facts or is otherwise liable for the transactions at issue.

### **RELIEF REQUESTED**

Claimants requested an Award setting forth who, as between FISC and AWD, has liability to Russell and Essenbee or to each other; damages against AWD and/or others of replacement Z-Bonds with a par value in excess of \$210,000.00 as of February 15, 1992 with a 9.25% or greater compounded monthly interest until maturity; alternatively, Claimants request a sum of money in excess of \$211,584.25, a comparable security or rescission coupled with a monetary award that would fully compensate each Claimant; Russell and Essenbee further request punitive damages, costs and attorney's fees.

Respondent, AWD, requested dismissal, costs and attorney's fees; alternatively, AWD requested indemnification from Third Party Respondents.

Respondent, Masters, requested dismissal of the Third Party Claim, costs and attorney's fees.

Respondent ARH requested dismissal, costs and attorney's fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

1. Prior to the hearing of this matter Clarke, named as a Third Party Respondent by AWD, objected to the jurisdiction of the NASD and refused to voluntarily submit to arbitration. In the absence of an arbitration agreement between Clarke and AWD, or a court order directing Clarke to arbitrate this dispute, the NASD removed Clarke as a party on April 17, 1992.

2. The parties stipulated as follows:

- a. That Claimants, Russell, FAB, and Essensbee, are not liable for the losses sustained on the securities in question.
- b. That Claimants, Russell and Essenbee, are entitled to recover, from Claimant, FISC, the losses which they sustained.
- c. That the issue of negligent misrepresentation would not be applicable.
- d. That the parties would not raise any issue as to whether the securities in question were sold to FISC or to another company,

Broadway.

e. That FISC has paid and will be responsible for paying all session fees assessed against the Claimants.

f. That FISC represented that the amount owed to Russell and Essenbee is \$212,612.40 plus interest from November, 1992.

3. This Panel finds that the testimony reflects that none of the parties to this action was aware that the securities in question were CAB's at the time of the trades.

4. This Panel finds that the testimony reflects that all of the parties to this arbitration operated under the impression/assumption that the securities in question were Z Bonds.

5. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant, FISC, is found liable and shall pay to Russell the principal amount of \$121,492.80, plus interest from November 15, 1992 to October 15, 1993 in the amount of \$10,302.58 for a total due to Russell of \$131,795.38.

2. Claimant, FISC, is found liable and shall pay to Essenbee the principal amount of \$91,119.60, plus interest from November 15, 1992 through October 15, 1993 in the amount of \$7,726.94 for a total due to Essenbee of \$98,846.54. (Costs are addressed below.)

3. Respondent, AWD, is found liable and shall pay to FISC the amount of \$74,000.00, inclusive of interest. This amount includes a reduction which has been made based upon defenses proven at the hearing.

4. Third Party Respondent, ARH, is found liable and shall pay to AWD the amount of \$37,000.00, inclusive of interest.

5. Third Party Respondent, Masters, is found not liable and, therefore, all claims against it are hereby dismissed.

6. Assignment of Rights: AWD, FISC and ARH shall cooperate in any action against Clarke arising out of the transaction which is the subject matter of this arbitration. If any recovery is obtained, AWD, FISC and ARH shall divide the amount recovered on a pro rata basis computed based upon the amounts which have been paid pursuant to this award.

7. Claimants' requests for attorney's fees and punitive damages are denied.

8. Respondents' and Third Party Respondents' requests for attorney's fees and costs are denied.

#### **OTHER COSTS**

1. Claimant, FISC, is found liable and shall pay to Essenbee the amount of \$2,046.82 in reimbursement for some expenses in connection with the arbitration of this matter.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

#### **FORUM FEES**

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$8,250.00 (11 sessions x \$750.00).

2. Claimant, Russell, is hereby assessed \$1,833.33, for which the NASD shall retain the \$1,833.33 previously deposited in full satisfaction thereof.

3. Claimants, FAB and Essenbee, are hereby assessed \$1,083.33, for which the NASD shall retain the \$1,083.33 previously deposited in full satisfaction thereof.

4. Claimant, FISC, is hereby assessed \$1,333.34, for which the NASD shall retain the \$1,083.34 previously deposited in partial satisfaction thereof, leaving a balance due to the NASD of \$250.00.

5. Respondent, AWD, is hereby assessed \$1,875.00, for which the NASD shall retain the \$1,750.00 previously deposited in partial satisfaction thereof, leaving a balance due to the NASD of \$125.00.

6. Third Party Respondent, ARH, is hereby assessed \$1,125.00, for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof, leaving a balance due to the NASD of \$125.00.

7. Third Party Respondent, Masters, is hereby assessed \$1,000.00, for which the NASD shall retain the \$1,000.00 previously deposited in full satisfaction thereof.

8. The NASD shall retain the non-refundable filing fees of \$200.00 paid by the Claimants and \$500.00 paid by AWD.

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

Concurring Arbitrators' Signatures  
Name

/S/  
Randy R. Freedman, Esq.      Public/Chairperson

/S/  
Carl J. Hegner      Industry

/S/  
Richard I. Gagnon      Public

Date of Decision: 10-25-93