

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Beauregard A. Fournet, Jr. and Kathlyn D. Fournet

92-01137

Name of Respondent

Interstate/Johnson Lane Corporation

REPRESENTATION

For Claimant: Beauregard A. Fournet, Jr. and Kathlyn D. Fournet were represented by Herman C. Hoffmann, Jr., Esq. of Simon, Peragine, Smith & Redfearn, located in New Orleans, Louisiana.

For Respondent: Interstate/Johnson Lane Corporation was represented by George C. Covington, Esq. of Kennedy Covington Lobdell & Hickman, located in Charlotte, North Carolina.

CASE INFORMATION

Statement of Claim filed: April 1, 1992.

Claimants' Submission Agreement signed on: March 13, 1992 by Beauregard A. Fournet, Jr. and Kathlyn D. Fournet.

Statement of Answer filed by Respondent Interstate/Johnson Lane Corporation on: July 6, 1992.

Respondent Interstate/Johnson Lane Corporation's Submission Agreement signed on: June 30, 1992 by Barry P. Harris, IV, Esq., Vice President and Associate General Counsel.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: January 27, 1993 for Two (2) sessions;
February 12, 1993 for One (1) session.

Hearing Location: New Orleans, Louisiana.

CASE SUMMARY

Claimants Beauregard A. Fournet, Jr. and Kathlyn D. Fournet, ("Fournet") alleged that the Respondent Interstate/Johnson Lane Corporation ("Interstate") breached an oral contract to receive a reduced margin interest rate on his margin account. Upon opening the account in January of 1988, Fournet was promised and received a margin interest rate of broker's call because of the large size of the account and the projected magnitude of commissions to be earned by Interstate. Fournet stated that he traded over \$17,250,000.00 in approximately one hundred and fifty-five transactions since January 1988 which generated \$345,000.00 or more in commissions and the profits on the \$1,393,000.00 margin interest generated at least \$350,000.00 in net income for Interstate.

Fournet further alleged that:

1. He received two letters dated October 26, 1990 and November 9, 1990 from Bob McGuire ("McGuire") of Interstate which indicated that the margin interest rate was raised, all purchases were frozen until Fournet signed a new margin agreement ("Agreement") and, upon receipt of the signed Agreement from Fournet, the account would be reviewed;
2. On October 31, 1990 and on November 16, 1990, Fournet participated in two telephone conference calls with Parks Dalton, the CEO of Interstate ("Dalton"); Jim Baker, Interstate Department Manager ("Baker"); and David Elgart, Interstate broker ("Elgart") during which amendments to the Agreement were discussed. Dalton said that the quid pro quo for Fournet's signature on the Agreement was "it's back to business as usual"- back to the same terms he had previously;
3. After Interstate received the signed agreement, Fournet realized that the margin interest rate was not levied in compliance with the oral contract made by Dalton during the conference calls. In addition, Fournet alleged that Interstate refused to reduce the margin interest rate from prime plus 1/4 in violation of the

verbal contract:

4. Fournet received a letter dated January 10, 1992 from Michael Hearn and Bob McGuire which informed him about Interstate's "new policy" of 50% maintenance and more new margin rates, contradicting the existence of the established contractual arrangement: and

5. Interstate maintained a special debit rate for accounts over \$750,000.00 for which his account was qualified. Fournet was excluded from receiving this rate for no actionable cause.

Respondent Interstate denied the material allegations of the Statement of Claim, alleging that there was no verbal agreement with Fournet for a continued preferential margin interest rate. Interstate maintained that the alleged verbal contract provided for standard margin rates, relevant documentation shows there was no agreement for a preferential rate after December 1, 1990 and this dispute is a result of an assumption made by Fournet that he would receive a reduced rate.

Interstate further alleged that upon review of corporate practices involving margin accounts, Interstate concluded that Fournet's investments in unrated, sometimes distressed, bonds on margin posed potentially greater than average risks to its capital. The review further found that the Fournets' margin agreement was substantially altered by Fournet and it was necessary to obtain a new margin agreement from Fournet to increase the margin requirement, to discontinue any preferential interest rate and to apply standard margin interest rates. Interstate asserted that these actions were authorized by the existing contract with Fournet.

Interstate alleged that a verbal request for execution of a new margin agreement was made to Fournet in the Summer or Fall of 1990. The letter dated October 26, 1990 informed Fournet of the change from the reduced margin interest rate to the standard margin interest rate. The letter dated November 9, 1990 informed Fournet of the increased margin maintenance requirement effective November 26, 1990 and of Interstate's decision to restrict the account to liquidations of sales of existing positions and to prohibit any withdrawals due to the debit.

Beauregard A. Fournet, Jr. and Kathlyn D. Fournet executed a new margin agreement on November 19 and 20, 1990, respectively. The new agreement did not state that the Fournet account would receive a preferential margin interest rate. The standard margin interest rate was applied to the account on December 1, 1990. Interstate allegedly received no question or complaint concerning the margin rate for over a year.

In addition, Interstate asserted the following affirmative defenses:

1. The Fournets were fully informed of the material terms of their margin account;
2. Denying that any material misrepresentations or omissions occurred in association with the Fournets' account, Interstate stated that, if any occurred, they were not the result of intentional or reckless behavior;
3. By the information provided to them and their silence, the Fournets had ratified the margin interest rates and are estopped from asserting these claims;
4. By failing to pay their margin debit once they learned of the rates applied to their account and continuing to borrow money, the Fournets were precluded from making these claims;
5. By the information provided to them and their silence, the Fournets waived these claims;
6. Denying the Fournets' operative allegations, Interstate stated that, if the allegations were true, the Fournets failed to mitigate their damages;
7. Interstate acted in good faith and did not directly or indirectly induce or facilitate the Fournets' alleged misunderstanding; and
8. The actions taken by Interstate were in accordance with the contract and the representations to the Claimants.

RELIEF REQUESTED

Claimants Beauregard A. Fournet, Jr. and Kathlyn D. Fournet requested entry of an Award against Respondent Interstate/Johnson Lane Corporation in the sum of approximately \$37,635.36; interest; costs of arbitration; expenses and punitive damages. Pursuant to Section 39(b) of the NASD Code of Arbitration Procedure, the panel permitted Claimants to adjust the claim for damages to \$71,453.00 at hearing. In addition, the Claimants withdrew their claim for punitive damages.

Respondent Interstate/Johnson Lane Corporation requested that the Statement of Claim be dismissed and an entry of an award against Beauregard A. Fournet, Jr. and Kathlyn D. Fournet for costs of the arbitration.

OTHER ISSUES CONSIDERED & DECIDED

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 NASD.

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. Respondent Interstate/Johnson Lane Corporation is liable for and shall pay to Claimants Beauregard A. Fournet, Jr. and Kathlyn D. Fournet the sum of \$9,881.51, plus simple interest at the rate of 9% per annum from February 12, 1993 until the award is paid in full;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

OTHER COSTS

Pursuant to Section 43(c) of the Code of Arbitration Procedure, Respondent Interstate/Johnson Lane Corporation is liable for and shall pay to the NASD the sum of \$800.00 as adjournment fees for two adjournments.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Three (3) hearing sessions x \$400.00 per session = \$1,200.00.

The National Association of Securities Dealers, Inc. shall retain the \$120.00 claim filing fee and the \$400.00 hearing session deposit previously deposited by the Claimants, Beauregard A. Fournet, Jr. and Kathlyn D. Fournet. Claimants Beauregard A. Fournet and Kathlyn D. Fournet are jointly and severally liable for and shall pay to the NASD additional forum fees in the sum of \$200.00. Respondent Interstate/Johnson Lane Corporation is liable for and shall pay to the

NASD forum fees in the sum of \$600.00.

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

Concurring Arbitrators' Signatures

Name:

Date:

Daniel Eugene Bivens, III
Daniel Eugene Bivins, III
Public Arbitrator
Chairperson

May 9, 1993

Clayton J. Bourne III, Esq.
Clayton J. Bourne III, Esq.
Public Arbitrator

May 6, 1993

Kenneth P. Daigle
Kenneth P. Daigle
Industry Arbitrator

May 12, 1993

Date of Service on Parties: 5-25-93