

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John F. Schulte
dba John F. Schulte Inc.

92401265

Name of Respondents

Martin R. Frankel
Thomas F. White
Sonia D. Schulte
Thomas F. White & Co. Inc.

REPRESENTATION

Claimant John F. Schulte dba John F. Schulte Inc. ("Claimant") represented himself.

For Respondents Martin R. Frankel ("Frankel") and Sonia D. Schulte ("Schulte"): Ronald P. Kane, of Siegan Barbakoff et al.

For Respondents Thomas F. White ("White") and Thomas F. White & Co. Inc. ("TFWC"): Patrick Baldwin, a sole practitioner.

CASE INFORMATION

Statement of Claim filed: June 15, 1992.

Supplemental Statement of Claim filed: June 8, 1992.

Second Supplemental Statement of Claim dated: June 12, 1992.

Rebuttal to Statement of Response of Sonia D. Schulte filed: April 15, 1993.

Reply to Respondent Frankel's Motion to Dismiss filed: February 22, 1993.

Reply to Frankel's Renewal of Motion to Dismiss filed: April 5, 1993.

Claimant's Submission Agreement signed on: March 16, 1992.

As required, pursuant to Section 25 of the Code of Arbitration Procedure, Respondents Martin Frankel and Thomas F. White did not file a Statement of Answer nor a Submission Agreement.

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Further, Claimant alleged that on March 16, 1990, two unauthorized letters were sent on TFWC letterhead alleging slanderous and libelous statements concerning Claimant and his staff. Claimant alleged these letters were drafted by Respondent Frankel and signed by Respondent Schulte and other members of their staff. Claimant alleged that on March 19, 1990, Respondent White wrote to clients that these letters were unauthorized; however, Claimant alleged that "the damage had been done." Claimant also alleged that revenue for the month of March 1989 was reduced by ninety (90%) percent due to the letters being sent and media attention.

Claimant alleged that Respondents Schulte and Frankel went to Chicago and instigated a private investigation under an SEC subpoena delivered to Claimant in May 1990. Claimant alleged he adhered to the subpoena and made a successful presentation to the NASD. Claimant then alleged Respondent Frankel was investigated for his involvement in the sale of unregistered limited partnerships.

Claimant alleged he continued to attempt to collect monies from TFWC; however, claims and third-party claims in the courts were dismissed. Claimant alleged Respondent White's office continued to solicit sales of the unregistered limited partnerships written by Respondent Frankel and that Respondent White denied doing so. Claimant alleged repeated attempts were made to make Respondent White aware of federal lawsuits pending against Respondent Frankel for RICO damages due to racketeering and fraud. Claimant further alleged that one client, Ted Bitter ("Bitter") started an arbitration hearing concerning an unregistered limited partnership of Respondent Frankel's.

Respondent Frankel submitted a Motion to Dismiss in lieu of a Statement of Answer. Respondent Frankel maintained he was not a member of the NASD nor was he associated with any member as that term was defined in Art. I. Sec. 1(m) of the NASD ByLaws. Frankel further asserted there was no agreement between he and Claimant or John F. Schulte, Inc. to arbitrate any dispute with the NASD or any other self-regulatory organization.

Claimant alleged that Respondent Frankel was a party to this arbitration. He alleged that letters referred to by Claimant in his Statement of Claim were part of Frankel's "doings" as was the illegal solicitation of clients into Creative Limited Partners and that both are part of this case. Further, Claimant alleged that at the time of this termination, Frankel was employed in the securities business, and thus a party to binding arbitration.

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Respondent TFWC amended its Statement of Answer to include Respondent White at the hearing. TFWC maintained it did not have a business relationship with John F. Schulte, Inc. ("JFSI") and had no knowledge of its activities. TFWC asserted it had no contract with Claimant or JFSI providing them exclusivity for the Toledo, OH area. TFWC contended it was the victim of a "bounced check" issued by Claimant to it for activities in Claimant's personal account; that Claimant had been commingling his personal funds with customer funds and that Claimant was given a temporary suspension pending further investigation. TFWC asserted that its auditors conducted a complete audit and the audit confirmed the commingling allegation and that Claimant was terminated with cause.

Respondent TFWC contended that Claimant's earned commissions were offset against the cost of the audit and the expense of a special office visit by the executive vice president, as was allowed by the sales agreement between Claimant and it.

Respondent TFWC maintained it was aware of an unauthorized letter sent to its customers by Respondent Schulte and that it immediately notified all customers the letter was unauthorized. TFWC further asserted it had no relationship with Respondent Frankel and no knowledge of his activities, nor did it approve or solicit sales of Frankel's alleged partnership. Finally, TFWC contended it was never the subject of an arbitration or litigation involving Bitter or any other customer of its Toledo office.

Respondent TFWC filed a counterclaim against Claimant alleging that after his termination Claimant continued to run advertisements under the TFWC name and the Claimant was continuing to do so.

Respondent Schulte asserted that the Statement of Claim was one of numerous litigation matters which Claimant brought against her and others. Schulte asserted that the matters derive from the animosity created by the divorce from Claimant. Schulte contended she resigned from the Oregon, OH of TFWC in April 1989 due to marital problems; however, she again became employed by TFWC at the West Toledo, OH office in late 1989 (while Claimant continued to be employed at TFWC's Oregon, OH office).

Respondent Schulte asserted that Claimant was suspended by TFWC on December 7, 1989 pending an internal investigation. Schulte maintained the internal investigation concluded that Claimant occasionally endorsed checks from his customers and the company account made to customers to his JFSI account; that

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Claimant would later issue checks out to customers from his JFSI account to those same customers; and that while Claimant was commingling customer funds with his own, it was the opinion of the auditors that all customer funds diverted were subsequently paid out to those customers.

Respondent Schulte contended that TFWC terminated Claimant on March 8, 1990 and that during March 1990, shortly after Claimant was terminated, a letter was sent to certain TFWC customers advising them of the closing of the Oregon, OH office. Schulte maintained the letter was neither libelous nor slanderous and that on their face, there was nothing false about the statements; she did not engage in any wrongful conduct or cause damage to Claimant; and that TFWC suspended Claimant on December 8, 1989 which continued until his termination on March 8, 1990. whereby Schulte contended that any letter sent on March 16, 1990 would not have been the cause of any reduction in Claimant's revenue. Schulte maintained that if any reduction occurred, it was caused by Claimant's suspension and termination from TFWC.

Finally, Respondent Schulte asserted that pursuant to Ohio law requests for damages based upon purported defamatory statements may not be based upon speculation and that absent specific contractual language, arbitrators may not award punitive damages to any Claimant.

Claimant alleged that Respondent Schulte was not employed by TFWC from May 1989 through November 1989; that Respondent Schulte misrepresented to TFWC her relationship with Claimant in November 1989; and that Respondent Schulte was internally suspended by TFWC in December 1989. Claimant alleged that there was no reduction in business from the time of suspension by TFWC in December 1989 to the subsequent termination on March 8, 1990. Claimant alleged he was terminated after he resigned, dated March 1, 1990.

Claimant alleged that Bitter recovered damages through federal court filings and arbitration. Finally, Claimant alleged this was not a frivolous arbitration, but a serious breach of the Rules of Fair Practice.

RELIEF REQUESTED

Claimant requested: actual damages in the amount of \$101,357.27; and punitive damages in the amount of \$100,000.00.

Respondent TFWC requested on its counterclaim that the arbitration panel issue an order to require Claimant to stop his unauthorized activity; and to award them

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a reasonable dollar amount to compensate them for the loss of business, legal expenses and loss of reputation.

Respondent Schulte requested that Claimant's request for damages be denied; that this matter, as it relates to her, should be dismissed in its entirety; and costs.

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.

1. The arbitration panel determined they had no jurisdiction over Respondent Martin Frankel and dismissed him, without prejudice, on October 20, 1993;
2. The arbitration panel dismissed Respondent Sonia Schulte, with prejudice, on October 21, 1993;
3. Pursuant to the bylaws of the NASD, the arbitration panel determined that Respondents White and Schulte were bound by its rulings and determinations.

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. Claimant John F. Schulte dba John F. Schulte Inc.'s claims against all Respondents are denied;
2. Respondent Thomas F. White & Co., Inc.'s counterclaims against Claimant are denied;
3. Claimant John F. Schulte's claim for punitive damages against all Respondents is dismissed;
4. Each party shall bear its own expenses, except that Respondents Thomas F. White Co., Inc. and Thomas F. White are hereby liable, jointly and severally, and shall reimburse to Claimant the sum of \$750.00; said

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amount to represent the hearing session deposit previously paid by Claimant to the NASD.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the NASD shall retain the \$500.00 and \$250.00 non-refundable filing fees previously deposited by Claimant John F. Schulte dba John F. Schulte Inc. and Respondents Thomas F. White Co., Inc. and Thomas F. White, respectively, and the following Forum Fees are assessed.

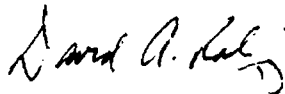
4 sessions X \$750.00 = net \$3,000.00 due.

Forum fees Assessed Against:

1. Respondents Thomas F. White Co., Inc. and Thomas F. White are hereby liable, jointly and severally, in the amount of \$3,000.00. However, as noted above, Respondents shall reimburse to Claimant the sum of \$750.00 and the NASD shall retain Respondents hearing session deposit of \$600.00; therefore, the amount due and owing to the NASD equals \$1,650.00.

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

Arbitrator Signature



David A. Rodriguez: Industry Arbitrator

Date of Decision: November 23, 1993

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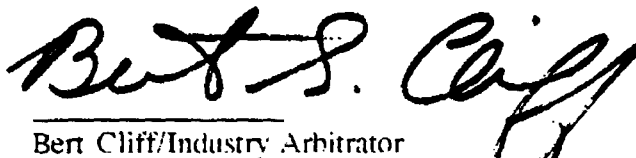
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Bert Cliff/Industry Arbitrator

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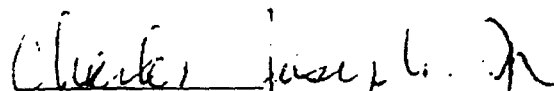
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Arbitrator Signature


Charles Joseph, Jr./Industry Arbitrator

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