

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

**In the Matter of the Arbitration Between**

**Name of Claimant**

Thomas L. Stafford

vs.

AWARD  
#92-02083

**Name of Respondent**

National Financial Services Corp.

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**In the Matter of the Arbitration Between**

**Name of Claimants**

Signet Investment Corporation n/k/a Signet Financial Services, Inc.  
Signet Bank/Virginia

vs.

AWARD  
#93-02573

**Name of Respondent**

Thomas L. Stafford

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The above captioned cases were consolidated for hearing and this award reflects the Panel's decision on both cases.

**REPRESENTATION**

For Thomas L. Stafford (hereinafter referred to as "Claimant" or "Stafford") Claimant in case number 92-02083 and Respondent in case number 93-02573: Matthew A. Clary, III, Esq. and Richard G. Moore, Esq. of the law firm of Clary

Stafford Arbitration  
NASD Case No. 92-02083 consol. w/93-02573  
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& Moore, P.C., Falls Church, Virginia

For National Financial Services Corp. (hereinafter referred to as "NFSC")  
Respondent in case number 92-02083: Thomas J. McGonigle, Esq. and Jonathan  
R. Tuttle, Esq. of the law firm of McGuire Woods Battle & Boothe, Washington,  
D.C.

For Signet Investment Corporation n/k/a Signet Financial Services, Inc. ("SIC")  
and Signet Bank/Virginia ("Signet") Claimants in case number 93-02573: Ronald  
E. Kuykendall, Corporate Counsel for Signet Banking Corporation, Richmond,  
Virginia

### **CASE INFORMATION**

Stafford's Statement of Claim filed in case number 92-02083 on: June 19, 1992  
Stafford's Submission Agreement signed on: June 15, 1992  
Stafford's Reply to NFCS's Counterclaim filed: September 1, 1992

NFSC's Statement of Answer and Counterclaim filed in case number 92-02083 on:  
August 13, 1992  
NFSC's Submission Agreement signed on: July 7, 1992

SIC and Signets' Statement of Claim filed in case number 93-02573 on: June 29,  
1993  
SIC and Signets' Submission Agreement executed on: June 28, 1993  
SIC and Signets' Reply to Counterclaims filed: November 8, 1993

Stafford's Statement of Answer and Counterclaims against SIC and Signet filed:  
October 29, 1993  
Stafford's Statement in Lieu of Uniform Submission Agreement executed on:  
October 17, 1993

### **HEARING INFORMATION**

Hearing Dates/Sessions:

March 7, 1994 - one session  
March 16, 1994 - two sessions  
March 17, 1994 - two sessions  
March 18, 1994 - two sessions  
April 27, 1994 - two sessions  
April 28, 1994 - two sessions  
June 23, 1994 - two sessions

Hearing Locations: ANA Hotel, Washington, D.C., NASD Executive Offices, Washington, D.C. and the law firm of McGuire Woods Battle & Boothe, Washington, D.C.

### **CASE SUMMARY**

Stafford alleged, among other things, that on or about July 24, 1990, SIC unsuccessfully attempted to persuade him to execute a Customer's Margin Agreement with NFSC. Claimant alleged that the execution of the Customer's Margin Agreement was required in order to authorize NFSC to act as had BHC Securities, Inc. (BHC), as the clearing broker for Claimant's stock transactions.

Claimant alleged that on or about August 10 through the 13, 1990, without authority from Claimant, SIC, acting as an agent for NFSC, wrongfully transferred Claimant's stock account and stocks to NFSC consisting of 25,000 shares of National Patent Development Corp. (NPD), 1,000 shares of Oracle Systems Corp. (Oracle), 2,000 shares of Seagate Technology, Inc. (Seagate) and 6,000 shares each of Omax Technology Group, Inc. (Omax) and Miniscribe Corp (Miniscribe).

Claimant alleged that he had directed SIC to transfer his account and stocks to Waterhouse Securities, Inc. (Waterhouse) in the event BHC was no longer to act as the clearing broker. Claimant alleged that on or about August 22, 1990, upon learning that his account and stocks had not yet been transferred to Waterhouse, Claimant contacted SIC for the purpose of arranging protection for his account and stocks. Claimant alleged that he and SIC orally contracted that should the equity in Claimant's account drop below 35%, SIC would immediately liquidate Claimant's account and transmit to him a sum of not less than his full equity in the market value of his stocks.

Claimant alleged that upon his return from Europe, he learned on or about September 24, 1990, that SIC had breached their oral contract of August 22, 1990, and placed Claimant's account in an extremely precarious position which required Claimant to meet margin calls of \$26,658.00. Claimant alleged that he proposed to SIC that a reasonable time and opportunity be provided in order for him to obtain a loan for purpose of avoiding future anticipated margin calls which SIC orally contracted and agreed to. Claimant alleged that he proposed to SIC an opportunity to obtain a loan utilizing his debt-free working farm conservatively worth at least \$375,000.00.

Claimant alleged that SIC orally contracted and agreed with Claimant that no involuntary liquidation of his account or sale of his stocks would be effected by

either SIC or NFSC until Claimant obtained the loan. Claimant alleged that on or about October 1, 1990, SIC introduced him to Mr. Klein of Signet for the purpose of requesting and processing the contemplated loan with Signet.

Claimant alleged that on or about October 3, 1990, Signet represented to Claimant that if he provided it with the requested personal and financial information which he in fact furnished, Signet would fully, fairly and expeditiously process his loan application and further represented to Claimant that it saw no reason for denying the loan contingent upon verification of Claimant's documentation. Claimant alleged that Signet informed Claimant that it would begin processing his loan for \$80,000.00 although his loan request was for only \$74,000.00 payable in one year at 10% interest. Claimant alleged that on or about October 10, 1990, he was orally informed that his loan was denied and on or about October 13, 1990, Signet provided Claimant with a letter indicating that his requested loan was denied. Claimant alleged that had he known on or about October 1, 1990, that Signet was not interested in loaning Claimant funds, he would have immediately begun the application process of a loan request elsewhere.

Claimant alleged that NFSC, without authority to do so, made unauthorized trades in his account. Claimant alleged that SIC aided, abetted and assisted NFSC in making unauthorized transactions. Claimant alleged that NFSC, SIC and Signet committed breach of contract, conversion, and violated Virginia Securities Act Section 13.1 - 502 and Rule 305. Claimant further alleged that NFSC, SIC and Signet violated the Equal Credit Opportunity Act and the Bank Holding Company Act.

NFSC, Signet and SIC categorically deny all allegations of wrongdoing alleged by Claimant. NFSC maintained that when Claimant opened his account in March, 1983, and executed a margin agreement on April 25, 1983, at SIC, SIC's clearing broker was NFSC. NFSC maintained that SIC eventually decided to change clearing broker and transferred all of SIC's customers' accounts, records and securities to BHC in May 1984, and on August 19, 1985, Claimant executed a margin agreement with BHC. NFSC maintained that on July 16, 1990, SIC notified its customers that NFSC was again going to be SIC's clearing broker and on July 24, 1990, SIC sent written notification stating that, and that all customers' accounts, records, securities and margin accounts would be transferred from BHC to NFSC on August 13, 1990.

NFSC maintained that Claimant apparently attempted to find a brokerage house that would accept his account, but for reasons unknown to NFSC, no transfer was effected before SIC terminated its relationship with BHC resulting in Claimant's account being transferred to NFSC.

NFSC, SIC and Signet maintained that in an effort to accommodate Claimant, NFSC agreed to Claimant's request from SIC for flexibility in the application of NFSC's house margin maintenance requirement to Claimant's account for a limited period of time. NFSC, SIC and Signet maintained that Claimant was informed by SIC that his account had received margin calls and, in order to avoid his securities from being sold, Claimant deposited \$14,000.00 on September 26, 1990, and on October 1, 1990, Claimant deposited an additional \$12,658.00, as reflected in Claimant's account statement. NFSC, SIC and Signet maintained that after Claimant received the second set of margin calls, Claimant decided to seek a loan in order to pay off his entire margin debt.

NFSC, Signet and SIC maintained that on October 1, 1990, Claimant met with Mr. Hamel of SIC and later with Mr. Klein of Signet. NFSC, SIC and Signet maintained that Claimant inquired about the possibility of a loan secured by a farm which he owns and obtained loan forms to complete. NFSC, SIC and Signet maintained that Claimant returned on October 3, 1990, with the completed forms to Mr. Klein and was informed by Mr. Klein that Claimant would be informed within ten days as to whether his loan application was approved or disapproved.

NFSC, SIC and Signet maintained that Claimant met with Ms Owens of SIC and asked her to inform NFSC not to liquidate his account because Claimant was in the process of applying for a loan sufficient to pay his debt balance. NFSC, SIC and Signet maintained that Ms Owens consulted with Mr. Hamel and then contacted NFSC and asked them not to liquidate securities in Claimant's account until more information was received regarding the status of Claimant's loan to which NFSC agreed.

~~NFSC, SIC and Signet maintained that on October 10, 1990, Claimant was orally~~ *written*  
~~informed that his loan application had been denied.~~ NFSC, SIC and Signet maintained that on October 10, 1990, Claimant was orally informed that his loan application had been denied. NFSC, SIC and Signet maintained that on October 11, 1990, Claimant told Mr. Hamel that he was unable to meet any further margin calls.

NFSC, SIC and Signet maintained that NFSC and SIC began to liquidate positions in Claimants's account in order to meet margin calls and 25,000 shares of NPD were sold at \$2.20 per share to be applied against Claimant's margin debit balance. NFSC, SIC and Signet maintained that on October 13, 1990, Claimant was sent written notification that his loan application was denied because Signet could not meet the time frame within which Claimant needed the loan and the income on the farm property was not sufficient to cover the loan debt service.

NFSC, SIC and Signet maintained that on October 18, 1990, NFSC and SIC liquidated virtually all of the remaining positions. NFSC, SIC and Signet maintained that NFSC and SIC had the authority to liquidate Claimant's account. NFSC, SIC and Signet stated that 2,000 shares of Seagate were sold at \$6.375 per share, 1,000 shares of Oracle were sold at \$6.25 per share, and 6,000 shares of Miniscribe which trade was later reversed and returned to Claimant's account.

Since the institution of case number 93-02573, NFSC and SIC have terminated their clearing relationship and NFSC has assigned to SIC and Signet, its claim against Stafford for the debit balance remaining due and owing in his account. NFSC, SIC and Signet maintained that Claimant currently owes SIC and Signet \$1,841.29.

Claimant categorically denied all allegations asserted by SIC and Signet in their claim against him. Claimant denied that either the "assignment" had occurred or, if it had, denied that it was legally effective.

### **RELIEF REQUESTED**

*William D. x* Claimants requested compensatory damages in of \$207,350 (which reflects the value of the portfolio deliverable to Stafford upon payment of the margin debt with loan principle<sup>AL</sup> and interest); damages for broker liquidating fees in the amount of \$1,177.35; plus \$50,000 for mental and emotional distress; statutory punitive damages in the amount of \$10,000 for failure to comply with any part of the Equal Credit Opportunity Act or in the alternative punitive damages as determined by the panel; statutory treble damages under the Bank Holding Company Act in the amount of \$622,050; and reasonable attorneys' fees and costs.

NFSC requested: that Claimant's claim be denied in its entirety and that it be awarded all attorneys' fees and costs associated with this arbitration.

SIC and Signet requested that Claimant's claim be dismissed in its entirety and that the Panel award SIC and Signet compensatory damages in the amount of \$1,841.29, plus interest, costs and reasonable attorneys fees.

Claimant requested that the claims of SIC and Signet be denied in their entirety.

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

Post-hearing documentation relating to the amount of and applicability of attorneys

fees was provided by the Claimant and NFSC, SIC and Signet. The Panel decided and determined that attorneys' fees are to be borne by the respective parties, therefore the parties specific requests for attorneys' fees are denied.

That the Panel has considered Claimant's request for a reasoned award and has denied his request.

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 and post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. NFSC, SIC and Signet are liable, jointly and severally, and shall pay to the Thomas L. Stafford the sum of \$85,500.00 inclusive of interest.
2. Stafford's allegations of violations of the Bank Holding Company Act Tying Arrangement and/or the Equal Credit Opportunity Act are not supported by substantial evidence and are therefore denied.
3. Stafford's claim for punitive damages are denied in their entirety.
4. SIC and Signet's claim in the amount of \$1,841.29 is denied.
5. Each party is to bear their own costs including attorney fees, except as specifically addressed herein.
6. All other claims not specifically addressed herein are dismissed and denied in their entirety.

**OTHER COSTS**

Any and all postponement fees previously paid by the parties shall be retained by the NASD.

**FORUM FEES**

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

*William H. Malloy, Jr.* 13 hearing sessions x \$1000 = \$13,000 minus Stafford's hearing session deposit of 1000 minus NFSC's hearing session deposit of \$300 minus SIC and Signet's hearing session deposit of \$750 = net \$10,950 due.

Forum Fees Assessed Against: Claimant shall bear one third (1/3) of the forum fees such that the amount due from Stafford is \$3,650. NFSC shall bear one third (1/3) of the forum fees so that the amount due from NFSC is \$3,650. SIC and Signet, jointly and severally, shall bear one third (1/3) of the forum fees so that the amount due from SIC and Signet is \$3,650.

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

Concurring Arbitrator's Signature

Name

*William H. Malloy, Jr.*  
William H. Malloy, Jr., Esq.

Public/Industry

*Public*

NASD Date of Decision: August 30, 1994



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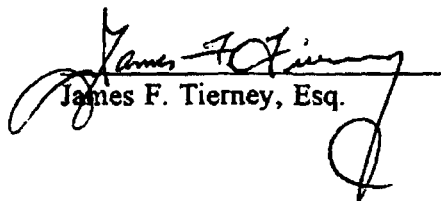
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Concurring Arbitrator's Signature

Name

  
James F. Tierney, Esq.

Public/Industry



NASD Date of Decision: August 30, 1994

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Concurring Arbitrator's Signature

Name

Public/Industry

*Sidney B. Wachtel*  
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Sidney B. Wachtel

NASD Date of Decision: August 30, 1994