

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

CHATFIELD DEAN & CO., INC.,
a Colorado Corporation,

CLAIMANT,

vs.

METRO HAULING, INC.,
a Virginia Corporation, and

WILLIAM B. SLOAN,

RESPONDENTS.

AWARD

CASE NO. 92-02229

NAMES OF COUNSEL

Appearing for Claimant Chatfield Dean
& Co., Inc.:

R. David Prescott
of Rutledge, Ecenia,
Underwood & Purnell,
Tallahassee, Florida

Appearing for Respondents Metro Hauling,
Inc. and William B. Sloan:

A. Peter Brodell (with
Robert E. Spicer, Jr. on
the pleadings), both of
Williams, Mullen,
Christian & Dobbins,
Richmond, Virginia

CASE INFORMATION

Date Claim Was Filed:

July 6, 1992

Names of Arbitrators:

William R. Waddell,
Chairman
Fred G. O'Fiesh
Ernestine M. R. Zipoy

Date Award Was Rendered:

As Set Out Below

Number and Date of Hearing
Sessions:

Four Sessions, Taking
Place over Two Full Days

May 18, 1993, two
sessions, and May 19, two
sessions

Hearing Location:

Board Room, Marriott
Hotel
500 E. Broad Street
Richmond, VA 23219

ISSUES INVOLVED; DAMAGES AND OTHER RELIEF REQUESTED

All securities involved in the claims and counterclaims set out below were common stock in Comverse Technology, Inc.

A. CLAIMS

Claimant Chatfield Dean & Co., Inc. ("Chatfield Dean"), filed its claim against Respondents Metro Hauling, Inc. ("Metro") and William B. Sloan ("Sloan") alleging breach of contract against both Metro and Sloan (Sloan being alleged to be the alter ego of Metro) arising out of Respondents' failure to settle a balance in the account of Metro in the amount of \$50,183.75.

Chatfield Dean further claimed damages under Section 517.301, Florida Statutes, based upon the allegation that Respondents fraudulently or negligently misrepresented that the purchases in the account would be paid for in a timely manner. Damages of \$50,183.75 were sought in this claim.

The claims for damages made for breach of contract and fraud under Florida statutes were understood to be in the alternative by the arbitrators.

Chatfield Dean claimed damages in an unquantified amount versus Metro and Sloan based upon common law fraud.

With respect to certain of such claims, interest and attorneys' fees were also sought.

B. ANSWER

Metro and Sloan filed an answer defending on the bases that: first, the allegations of the claim were untrue; second, certain of the purchases in the account were unauthorized; third, there were false and fraudulent representations by Chatfield Dean regarding commissions surrounding the purchases in the account; fourth, the purchases in the account were unsuitable and therefore fraudulent; fifth, Metro was induced to make purchases in the account through the use of acts and omissions in violation of the Securities Exchange Act of 1934, and specifically Rule 10b-5 thereunder; and, sixth, Chatfield Dean breached its fiduciary duty to Sloan and Metro and is therefore estopped from bringing its claim.

C. COUNTERCLAIM

Metro and Sloan filed a counterclaim alleging that: first, Chatfield Dean violated Rule 10b-5 by reason of fraudulent nondisclosure of commissions, damaging Respondents in the amounts

of \$6,825.00 and \$9,676.00, a total of \$16,501.00; second, Chatfield Dean breached its contract with Metro in certain respects, resulting in damages of \$6,825 (understood by the Arbitrators to be in the alternative to the first counterclaim); third, Chatfield Dean breached its contract with Sloan in certain respects, resulting in damages in the amount of \$9,676 (understood by the Arbitrators to be in the alternative to the first counterclaim); fourth, Chatfield Dean breached its duty of confidentiality to Metro and Sloan in making certain disclosures concerning Metro and Sloan to third parties, giving rise to damages to each in the amount of \$100,000.00; fifth, Chatfield Dean did not execute an order to sell given by Sloan with respect to securities in his individual account, and/or refused to deliver the securities in such account, which resulted in damages in the amount of \$99,207.00; sixth, the sale of stock to Metro and Sloan by Chatfield Dean was made through acts or omissions violating Section 13.1-502(1) of the Code of Virginia (which claim was understood by the Arbitrators to be in the alternative to previous counterclaims); and, seventh, Metro and Sloan should be awarded \$175,000.00 in punitive or exemplary damages by reason of the fact that Chatfield Dean acted without justification or excuse, in bad faith, and maliciously.

Thus the total amount of damages sought on behalf of Sloan was \$208,883.00 and on behalf of Metro was \$106,825.00, with punitive damages to both Metro and Sloan in the amount of \$175,000.00.

With respect to certain of such claims, interest and attorneys' fees were also sought.

D. REPLY TO COUNTERCLAIM

Chatfield Dean filed a reply to Respondents' counterclaim denying the truth of the matters alleged in the counterclaim, denying the legal conclusions therein, denying that Virginia law applies to the controversy, denying that Metro or Sloan suffered damages, and denying that punitive damages may be awarded.

AWARD

The arbitration panel, having considered the pleadings and the testimony and evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination the following:

1. The trades made in the Metro account having trade dates of March 3 and March 6, 1992, were authorized, or were ratified and accepted by Metro. Chatfield Dean is awarded against Metro the sum of \$17,247.50 with respect to those trades, being the

difference between the purchase price and the sales proceeds realized by Chatfield Dean.

2. The trade having a trade date of March 9, 1992, was unauthorized, and Chatfield Dean is not entitled to recover with respect thereto.

3. The claim that Sloan was the alter ego of Metro or vice versa is denied.

4. The claim that Sloan is liable for the transactions of Metro under Section 517.301 of the Florida Statutes is denied, being insufficiently supported by the evidence. The Arbitrators find it unnecessary to decide whether the laws of the State of Florida in fact apply.

5. The claim for common law fraud against Metro and Sloan is denied, being insufficiently supported by the evidence.

6. Chatfield Dean's claim for interest and attorneys' fees is denied.

7. The first and second defenses of Sloan and Metro are found to be valid or invalid to the extents set out above.

8. The third defense of Metro and Sloan is found to be invalid for the reasons set out below with respect to the first counterclaim.

9. The fourth defense of Metro and Sloan is found to be invalid, being insufficiently supported by the evidence.

10. The fifth defense of Metro and Sloan, to the extent it states a defense separate from the second, third and fourth defenses, is found to be invalid, being insufficiently supported by the evidence.

11. The sixth defense is found to be invalid, in part being insufficiently supported by the evidence and in part for the reasons set out below with respect to the fifth counterclaim.

12. The first counterclaim, based upon fraudulent nondisclosure of commissions, is denied, being insufficiently supported by the evidence, and the arbitrators having found that Sloan did not rely to his detriment on any nondisclosure of commissions. This being the case, it is also rejected as a defense to the claims of Chatfield Dean.

13. The second and third counterclaims, alleging a contractual duty to charge no commissions, are denied, being insufficiently supported by the evidence.

14. The fourth counterclaim, based upon an alleged breach of Chatfield Dean's duty of confidentiality toward Metro and Sloan, is found to be supported by the evidence. The Arbitrators find that although the conduct of Chatfield Dean was improper no quantifiable damages have been proven with respect to such breach of confidentiality, and therefore award nominal damages in the amount of \$1.00 to Metro and Sloan jointly on this counterclaim. In the course of the proceedings, counsel for Metro and Sloan produced certain other evidence with respect to breaches of the duty of confidentiality, which evidence went beyond the pleadings. The Arbitrators have considered such evidence.

15. The fifth counterclaim, alleging a failure on the part of Chatfield Dean to sell securities in Sloan's individual account, is denied, being insufficiently supported by the evidence, or, in the alternative, by reason of there having been no proven damages with respect to such failure.


16. The sixth counterclaim, based upon violation of the Virginia Securities Act, is denied, being insufficiently supported by the evidence. The Arbitrators find it unnecessary to decide whether Virginia law in fact applies.


17. The seventh counterclaim, for punitive damages, is denied, being insufficiently supported by the evidence. The Arbitrators find it unnecessary to decide whether they in fact have the power to award such damages.

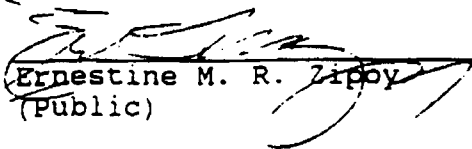
18. No interest or attorneys' fees are awarded to either party; therefore the parties shall bear their own attorneys' fees, costs and expenses. The nonrefundable fees deposited by the parties shall be retained by the National Association of Securities Dealers, Inc., pursuant to Section 43 of the NASD Code of Arbitration Procedure. The forum fee deposit made by Respondents Sloan and Metro of \$750.00 shall be refunded. The forum fee deposit made by Claimant Chatfield Dean of \$600.00 shall be applied to the forum fees assessed under the following paragraph of this award.

19. Claimant is assessed forum fees for four hearing sessions, a total of \$2,400.00. Such fees shall be satisfied by payment to the NASD, through its staff counsel, of the amount of \$1,800.00, being the excess of awarded forum fees over the Claimant's deposit retained.

Arbitrators concurring as of June 7, 1993:


William R. Waddell, Esq.
(Public - Chair)


Fred G. O'Flesh
(Industry)


Ernestine M. R. Zippoy
(Public)

NASD-AWARD WRW

NASD DATE OF DECISION: June 29, 1993