

N.A.S.D. AWARD

9307165

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant/Counter-Respondent

Texas Commerce Financial Services, Inc.

92-02315

Name of Respondent/Counter-Claimant

Arthur W. Hall

REPRESENTATION

For Claimant/Counter-Respondent: Texas Commerce Financial Services, Inc. was represented by Terry Knell of Texas Commerce Financial Services, Inc., Houston, Texas.

For Respondent/Counter-Claimant: Arthur W. Hall was represented by E.W. Newman, Esq. of Houston, Texas.

CASE INFORMATION

Statement of Claim filed: July 13, 1992.

Claimant/Counter-Respondent's Submission Agreement signed on: July 6, 1992 by John T. Snider, President, Texas Commerce Financial Services, Inc.

Statement of Answer and Counter-Claim filed by Respondent/Counter-Respondent Arthur W. Hall on: December 29, 1992.

Respondent/Counter-Claimant Arthur W. Hall did not file an executed submission agreement.

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HEARING INFORMATION

Pre-Hearing Conference: None Held.
Hearing Date/Sessions: February 26, 1993 for One (1) session.
Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant/Counter-Respondent Texas Commerce Financial Services, Inc. ("TCFS") alleged that Respondent/Counter-Claimant Arthur W. Hall ("Hall") failed to repay a debit balance in his account in breach of his account agreement. TCFS specifically alleged that:

1. On October 18, 1990, Hall delivered to TCFS a Polk County, Florida industrial revenue coupon bond in the face amount of \$10,000.00, which was forwarded to TCFS's safekeeping agent, National Financial Services Corporation ("NFSC"), until such time as the bond matured;
2. On April 1, 1991, the maturity date of the bond, Hall requested that his account be credited with the face value of the bond and his brokerage account was credited in the amount of \$10,000.00. Simultaneously, the funds were transferred from the brokerage account to Hall's checking account with a TCFS affiliate pursuant to his standing instructions. Hall withdrew the funds from his account;
3. Upon presentation of the bond to the paying agent, NFSC was told that the bond was in default and no payment would be made;
4. NFSC notified TCFS of the default on April 24, 1991, which then informed Hall and debited his brokerage account, causing an overdraft of \$10,000.00;
5. Pursuant to the account agreement, Hall agreed to repay such indebtedness upon demand. Despite demand, Hall has failed to repay the sum.

Respondent/Counter-Claimant Hall denied the material allegations of the Statement of Claim, alleging that:

1. Hall deposited the bonds with TCFS after being informed by its agent that pricing of the bonds could not be made unless the bonds were in their possession. The bonds were deposited on October 18, 1990 and Hall was informed that it would take several days to obtain the price of the bonds. The price was

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eventually established at \$9,800.00;

2. Based upon the information, Hall offered his mother \$10,000.00 toward the purchase of a new home. Hall continued monitoring the value of the bonds over the next several months and noted half and quarter point moves, giving him an indication of accurate pricing, low volatility and security;

3. On April 3, 1991, Hall noticed \$10,000.00 was posted to his checking account. He phoned TCFS and was advised that the bonds had matured, TCFS had cashed them and the \$10,000.00 was his proceeds. On April 4, 1991, Hall deposited the money in his mother's account and it was used to close on her home on April 10, 1991;

4. On April 24, 1991, TCFS advised Hall that after the bonds were taken out of his account and he was paid, they could not redeem or resell them and requested that Hall refund the money he was paid for the bonds. On April 25, 1991, Hall met with his TCFS broker and told him that he believed that TCFS legally purchased those bonds and that he would not buy them back because TCFS did not follow normal redemption procedures;

5. The broker contacted the paying agent and after several conversations, believed that the bonds had some value. He informed Hall that they would hold the bonds until they were paid and that they were entitled to all interest paid from April 1, 1991 on. TCFS performed as owner of the bonds for 15 months. In late summer of 1991, Hall was again contacted about repurchasing the bonds. Hall refused;

6. On September 25, 1991, a letter went to the bondholders advising of offer to pay. Hall called TCFS and recommended that this was a good opportunity to sell the bonds. TCFS again offered to sell the bonds to Hall for \$10,000.00 plus accrued interest, but he refused. Hall wanted the bonds sold because TCFS kept a debit entry in his account. TCFS refused to put the bonds out to bid. On October 25, 1991, the bond holders were informed that the offer for payment was withdrawn.

Hall counterclaimed, alleging that the claim was frivolous and that he was required to employ legal counsel to represent him.

RELIEF REQUESTED

Claimant/Counter-Respondent TCFS requested that the arbitrators enter an award against Hall

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for the following sums: \$10,000.00 as the amount of the deficiency in the account; interest from the date repayment was demanded until repayment is made, calculated using the rate charged by NFSC for carrying the debit balance in the account; and reimbursement for the NASD claim filing fee of \$500.00.

Respondent/Counter-Claimant Hall requested that the claim be dismissed and that TCFS be required to pay his attorneys' fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

Respondent/Counter-Claimant Arthur W. Hall filed a Motion for a Panel of Three Arbitrators after the filing of his initial pleading. Pursuant to Section 19 of the NASD Code of Arbitration Procedure, the motion and all responses were forwarded to the arbitrator for determination. On February 18, 1993, the arbitrator determined that the Motion would be denied.

Respondent/Counter-Claimant Arthur W. Hall did not file an executed submission agreement, but answered, appeared and testified at the hearing. The arbitrator, upon review of the Customer Agreement executed by Respondent/Counter-Claimant Arthur W. Hall on October 21, 1987, determined that there was a duly executed and enforceable agreement to arbitrate and that pursuant to Section 12 of the NASD Code of Arbitration Procedure, the Respondent/Counter-Claimant, Arthur W. Hall, was required to submit to arbitration.

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

AWARD

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

1. Respondent/Counter-Claimant Arthur W. Hall is liable for and shall pay to Claimant/Counter-Respondent Texas Commerce Financial Services, Inc. the sum of \$10,000.00;
2. Respondent/Counter-Claimant Arthur W. Hall's Counterclaim is hereby dismissed and denied in its entirety;
3. The parties shall bear their own costs of arbitration, including attorneys' fees,

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except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) hearing session x \$300.00 per session = \$300.00.

The National Association of Securities Dealers, Inc. shall retain the \$500.00 claim filing fee and the \$300.00 hearing session deposit previously deposited by the Claimant/Counter-Respondent, Texas Commerce Financial Services, Inc.

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

Arbitrator's Signature

Name

Date

Eugene Clements, Esq.
Eugene Clements, Esq.
Public Arbitrator

July 26, 1993

Date of Service of Award: 7-30-93