

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

Thomas F. White & Co., Inc.

NASD Arbitration  
No. 92-03263

Name of Respondents

Robert Thomas Securities, Inc.  
Raymond James & Associates, Inc.  
Donald J. Wascher  
Jerry Luger  
Chhay Kouch  
Euikeun Sunny Myung

Name of Counter-Claimants

Donald J. Wascher  
Jerry Luger  
Chhay Kouch  
Euikeun Sunny Myung

Name of Counter-Respondents

Thomas F. White & Co., Inc.  
Thomas F. White, individually  
Michel E. Millette

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REPRESENTATION

For Claimant and Counter-Respondents: Patrick Baldwin, Esq., Menlo Park, California

For Respondents Robert Thomas Securities, Inc. and Raymond James & Associates, Inc.: Kevin A. Carreno, Esq., Raymond James & Associates, Inc., St. Petersburg, Florida

For Individual Respondents and Counter-Claimants Donald J. Wascher, Chhay Kouch and Euikeun Sunny Myung: Stephen M. Williams, Esq., Fitzgerald, Abbott & Beardsley, Oakland, California

Respondent and Counter-Claimant Jerry Luger did not appear.

CASE INFORMATION

Statement of Claim filed: September 25, 1992  
Answer of Counter-Respondents filed: February 9, 1993  
Supplemental Pleading filed: June 11, 1993  
Claimant's Submission Agreement signed: October 15, 1992

Counter-Respondents Thomas F. White and Michel E. Millette did not file Submission Agreements. However, they are subject to National Association of Securities Dealers, Inc. (NASD) jurisdiction in accordance with Section 8 of the NASD Code of Arbitration Procedure.

Statement of Answer filed by Respondents Robert Thomas Securities, Inc. and Raymond James & Associates, Inc.: December 15, 1992  
Respondents' Robert Thomas Securities, Inc. and Raymond James & Associates, Inc. Submission Agreements signed: December 14, 1992

Statement of Answer and Counterclaim filed by Individual Respondents: December 29, 1992

Reply to Supplemental Pleading filed by Counter-Respondents filed: June 15, 1993

Individual Respondents' Submission Agreements signed as follows:

Donald J. Wascher: December 9, 1992  
Jerry Luger: December 23, 1992  
Chhay Kouch: December 22, 1992  
Euikeun Sunny Myung: December 22, 1992

#### HEARING INFORMATION

Pre-Hearing Conference Dates/Sessions: July 20, 1993 (one session)  
July 21, 1993 (one session)  
July 26, 1993 (one session)

Hearing Dates/Sessions: August 3, 1993 (two sessions)  
August 4, 1993 (two sessions)  
August 5, 1993 (two sessions)  
October 4, 1993 (two sessions)  
October 5, 1993 (two sessions)  
October 7, 1993 (two sessions)  
October 8, 1993 (two sessions)  
October 9, 1993 (one session)

Hearing Location: San Francisco, California

#### CASE SUMMARY

Claimant Thomas F. White & Co., Inc. (White) brought its Claim for damages and injunctive relief against four of its former representatives, and against Robert Thomas Securities, Inc. and its parent, Raymond James & Associates, Inc. (collectively RTS). Claimant alleged that RTS raided White for four of its representatives and that at least two of the representatives began

working for RTS while still employed with White. Claimant further alleged that while still at White these four representatives:

- 1) Took confidential proprietary information from White, which they have failed to return despite repeated requests;
- 2) Made misrepresentations about White and its business to (a) other brokers then registered with White, (b) employees at White, and (c) White customers, in an attempt to induce all of them to stop their business with White and move their business to RTS; and
- 3) Diverted existing accounts and prospective accounts from White to RTS. Claimant further alleged unfair competition against all Respondents, breach of contract against Representative Respondents, diversion of business, employees and customers to competitor against Representative Respondents, interference with prospective advantage against all Respondents, misappropriation of Trade Secrets/Uniform Trade Secrets Act against all Respondents and intentional interference with contractual relations against all Respondents.

Respondents RTS denied Claimant's allegations and denied that they offered any of the individual Respondents any inducement to join RTS or to transfer any accounts. RTS further alleged that each of the individual representatives separately contacted Robert Thomas to pursue transferring from White to Robert Thomas. RTS alleged that each and every one of the representatives expressed as a reason for terminating their relationship with White, the fact that the SEC had taken disciplinary action against White for its failure to supervise. RTS further alleged that they neither offered any incentives, bonuses, up-front payments and guarantees or other consideration to any of the individual Respondents in exchange for their transferring to RTS.

Individual Respondents Donald J. Wascher, Jerry Luger, Chhay Kouch and Euikeun Sunny Myung denied Claimant's allegations and asserted that Claimant's allegations are untrue, ill-founded and are not actionable. Individual Respondents further alleged that: 1) No confidential information or trade secrets were misappropriated by the individual Respondents; 2) The individual Respondents could not possibly have diverted business to RTS while still associated with White in that, as pointed out by White's own Statement of Claim, RTS did not exist in San Francisco prior to the departure of broker Donald J. Wascher; 3) No solicitation or misrepresentations were made by the individual brokers regarding White or the individual broker's choice to move to RTS. At least one of the brokers, Mr. Kouch, contacted RTS one year prior to any contact by Donald J. Wascher by RTS. Under Claimant's theory, Wascher is to have orchestrated the "raid;" 4) Statements regarding the withholding of commissions by White and impending one-year suspension of White by the S.E.C. are true and cannot be considered "defamatory;" 5) White's assertions of an ability to control the departure and business of the individual brokers is in direct contravention of their status as independent contractors with White;

and 6) The unexplained one year delay by White in commencing this arbitration has extremely prejudiced the Respondents and their ability to rebut the charges, demonstrates the complete lack of merit of White's claims and necessarily precludes the award of any injunctive relief as requested by White. The individual Respondents also asserted affirmative defenses.

In their Counterclaim, the individual Respondents alleged: 1) Refusal to Arbitrate - Harassment; 2) Abuse of Process; 3) Fraud - Deception - Failure to Disclose; 4) Unfair Competition - Restraint of Trade; and 5) Intentional Infliction of Emotional Distress.

Counter-Respondents denied generally and specifically, each and every allegation asserted by the individual Respondents and asserted affirmative defenses.

#### RELIEF REQUESTED

Claimant requested:

1. An order be entered against all Respondents enjoining them from engaging in acts of unfair competition, as alleged in the First Cause of Action, and for restitution;

2. An award be entered against Wascher, Luger, Kouch and Myung for compensatory damages in connection with the Second Cause of Action for breach of contract, in an amount which has not yet been fully determined, and including, without limitation, any amount White may pay to the lender to Wascher.

3. An order be issued enjoining Respondents Wascher, Luger, Kouch, and Myung from diverting business, employees, and customers of White as stated in the Third Cause of Action; and that an award be entered against said Respondents for compensatory damages in connection with the Third Cause of Action;

4. An award be entered against all Respondents for compensatory damages in connection with the Fourth Cause of Action for interference with prospective advantage, in an amount which has not yet been fully determined;

5. An award be entered against all Respondents for compensatory damages in connection with the Fifth Cause of Action for misappropriation of trade secrets, in an amount which has not yet been fully determined; and that an award of punitive damages and attorneys' fees under the Uniform Trade Secrets Act be entered against all Respondents on the Fifth Cause of Action;

6. An award be entered against all Respondents for compensatory damages in connection with the Sixth Cause of Action for intentional interference with contractual relations, in an amount which has not yet been fully determined; and that an award of punitive damages under applicable law be entered against all Respondents on the Sixth Cause of Action;

7. Costs and attorneys' fees; and

8. Such other and further relief as the panel may deem

appropriate.

Respondents RTS requested dismissal of Claimant's claims, and that White be assessed with the cost of this proceeding including reasonable attorneys' fees.

Individual Respondents requested:

1. All claims for monetary damages by White be dismissed in their entirety;
2. All claims for injunctive relief by White be dismissed in their entirety;
3. A declaration that Messrs. Wascher, Luger, Kouch and Myung have no liability to White arising out of this action;
4. A dismissal with prejudice and letter of apology for the filing of the state court action so as not to require an affirmative answer by any of the individual Respondents on any question found on the U-4 form as it pertains to the filing of that action;
5. A withdrawal of the U-5 form filed or completed on April 6, 1992, which states that Mr. Wascher was "discharged;"
6. Recovery to Respondents on the first counterclaim for a failure to arbitrate by White an award of not less than \$100,000.00 for each individual broker against White;
7. Recovery on the individual Respondents' second counterclaim for abuse of process in an amount of not less than \$100,000.00 for each individual;
8. Recovery on the individual Respondents' third counterclaim for fraud, deception and a failure to disclose by White in an amount not less than \$100,000.00 per individual Respondent;
9. Recovery on the individual Respondents' fourth counterclaim for unfair competition and restraint of trade in an amount of not less than \$100,000.00 for each individual Respondent;
10. Recovery under the fifth counterclaim for intentional infliction of emotional distress as to each individual broker in an amount to be proven at the arbitration, but in any case, not less than \$100,000.00 per individual;
11. Recovery of all attorneys' fees and costs; and
12. All other just and equitable relief which the panel may deem reasonable to grant.

#### OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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. All claims by Thomas F. White & Co., Inc., including any claims for punitive damages and any claims for injunctive relief, are dismissed.

2. Thomas F. White & Co., Inc. is solely liable for and shall pay to Donald J. Wascher the sum of \$10,000.00 in unpaid commissions.

3. Thomas F. White & Co., Inc. is solely liable for and shall submit an amended U-5 form for Donald J. Wascher reflecting the following information with respect to item 12:

Reason for termination: Voluntary

Explanation: The NASD found no violation of the NASD Rules of Fair Practice.

4. Thomas F. White & Co., Inc. is solely liable for and shall pay to Donald J. Wascher the sum of \$20,000.00 for intentional infliction of emotional distress.

5. Thomas F. White & Co., Inc. is solely liable for and shall pay to Donald J. Wascher the sum of \$63,000.00 in attorney's fees.

6. Thomas F. White & Co., Inc. is solely liable for and shall pay to Chhay Kouch the sum of \$10,000.00 for intentional infliction of emotional distress.

7. Thomas F. White & Co., Inc. is solely liable for and shall pay to Chhay Kouch the sum of \$31,500.00 in attorney's fees.

8. Thomas F. White & Co., Inc. is solely liable for and shall pay to Euikun Sunny Myung the sum of \$10,000.00 for intentional infliction of emotional distress.

9. Thomas F. White & Co., Inc. is solely liable for and shall pay to Euikun Sunny Myung the sum of \$10,500.00 in attorney's fees.

10. All other claims by Counter-Claimants are dismissed.

11. All claims by Jerry Luger are dismissed.

12. The parties shall each bear their respective costs of this proceeding.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$750.00 hearing session deposit previously deposited by the Claimant and refund the \$1,000.00 hearing session deposit previously deposited by the individual Respondents. Forum fees are assessed against:

Claimant Thomas F. White & Co., Inc., in the amount of \$11,400.00, calculated as follows: Three pre-hearing sessions times \$300.00/session plus fifteen hearing sessions times \$750.00/session minus the \$750.00 hearing deposit retained by the NASD.

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Blake Weston, Esq.	Industry Arbitrator
Marlyn G. McClaskey	Industry Arbitrator
Frank Weaver	Industry Arbitrator

Concurring Arbitrators' Signatures

Blake Weston  
Blake Weston, Esq.

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Marlyn G. McClaskey

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Frank Weaver

Date of Decision: 11/2/93