

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Harcourt Ryder Capital, Inc.

93-01235

Name of Respondent(s)

Stifel Nicolaus & Co., Inc.

REPRESENTATION

Claimant, Harcourt Ryder Capital, Inc. ("Harcourt"), was represented by George Franjola, Esq. of Allen, Dyer, Doppelt, Franjola & Milbrath, P.A., Orlando, Florida.

Respondent, Stifel Nicolaus & Co., Inc. ("Stifel"), was represented by Jeffrey J. Kalinowski, Esq. of Peper, Martin, Jensen, Maichel of St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed: March 29, 1993. Claimant's Submission Agreement signed by Robert Hughes on behalf of Stifel on March 24, 1993.

Statement of Answer filed by Respondent, Stifel on: June 28, 1993. Respondent's, Submission Agreement signed by Forrest Smith on behalf of Stifel on May 18, 1993.

HEARING INFORMATION

On November 1, 2 and 3, 1994 in Tampa, Florida hearings lasting six sessions were held.

CASE SUMMARY

Claimant alleged that Respondent was liable for: tortious interference with a business relationship; breach of fiduciary duty; breach of contract; and, fraud. Claimant alleged that, Respondent, upon learning in February of 1992 of Claimant's intention to operate as a broker/dealer in Florida in the public finance area, entered into an alliance with Claimant whereby Respondent assisted Claimant in registering as a broker/dealer, allowed the principals of Claimant to conduct public finance business as employees of Respondent while Claimant awaited registration as a broker/dealer and shared the public finance revenues with Claimant; Claimant further alleged that, in July of 1992, Respondent hired away Claimant's most visible investment banker, Kevin McCarty, and thereafter usurped public finance business that would have otherwise been Claimant's, leading ultimately to Claimant's demise. At the hearing, Claimant withdrew its claims for tortious interference with a business relationship, breach of contract and fraud.

Respondent denied all allegations of wrongdoing relating to the claims of tortious interference, breach of fiduciary duty, breach of contract and fraud. Stifel specifically denied that any enforceable contract existed or that any fiduciary relationship existed between the parties. Stifel denied that Harcourt sustained any compensable damages and alleged that it performed all its obligations under its arrangement with Harcourt.

Stifel further alleged that it did not solicit Mr. McCarty for employment, but rather was approached by him during July 1992. Mr. McCarty is alleged to have approached Stifel because of his dissatisfaction with the management of Harcourt, his equity participation in Harcourt and his compensation. Mr. McCarty is alleged to have been an employee at will who was free to leave Harcourt at any time for any reason and seek employment with any other firm. Respondent alleged that it had an absolute right to hire Mr. McCarty and that Claimant's claims were barred because Harcourt's failure as a business operation and alleged damages were caused as a result of the mismanagement and/or inadequate capitalization of Harcourt.

In addition, Stifel alleged that the cause of Mr. McCarty's leaving Harcourt was his dissatisfaction with Harcourt as opposed to any act of Stifel and that, therefore, Stifel cannot be held liable for any damages of Harcourt. Stifel further claimed that Harcourt's claim for tortious interference was barred for the reason that Stifel cannot be held liable for tortious interference with the business relationship to which it was a party. In addition, the tortious interference claim is alleged to have been barred because Stifel had an economic justification for

hiring Kevin McCarty which constitutes a privilege and bars recovery by Harcourt. Stifel has also asserted that the claims of breach of contract were barred by the Statute of Frauds, lack of consideration and lack of mutuality of contract.

Stifel also asserted that Harcourt's claims were barred by the doctrines of accord and satisfaction, waiver, estoppel, lack of standing and failure to mitigate.

RELIEF REQUESTED

Claimant requested damages in the amount of \$298,283.00 per year, the net revenues earned by Respondent for the one year period following its hiring of Mr. McCarty, for a period of three to five years, plus punitive damages of three to five

Respondent requested dismissal of the claim plus costs and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

None

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is found liable and shall pay to Claimant the amount of \$150,000.00
2. Respondent is also found liable for attorney's fees. The panel leaves the amount of such attorney's fees to be determined by an appropriate court of competent jurisdiction.
3. Claimant's request for punitive damages is denied.
4. Respondent's request for costs and attorney's fees is denied.

OTHER COSTS

1. Respondent is also found liable for costs of mileage and copying and shall pay to Claimant the amount of \$294.17.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$3,600.00 (6 sessions x \$600.00 per session).

1. Respondent is hereby assessed forum fees in the amount of \$3,600.00, of which \$600.00 shall be paid directly to Claimant as a refund of the hearing session deposit previously paid by Claimant and \$3,000.00 of which shall be paid to the NASD.
2. The NASD shall retain the \$500.00 non-refundable filing fee previously paid by Claimant.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/
Jeffrey R. Edwards, Esq.

Industry/Chairman

/s/
Michael Gonatos

Industry

/s/
Samuel Niden

Industry

Date of Decision: January 16, 1995