

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Bruce Bart Allen

93-02587

Names of Respondents

Southwest Securities, Inc.,
Texas Securities, Inc.,
Sara Sharpe, and
Malcolm Stockdale

REPRESENTATION

Claimant, Bruce Bart Allen appeared pro se.

Respondent, Southwest Securities, Inc. was represented by Steven R. Pitzner, Esq. of Sweet & Brousseau, Dallas, Texas.

Respondents, Texas Securities, Inc., Malcolm Stockdale and Sara Sharpe did not appear at the hearing (see below, Other Issues Considered and Decided).

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc., ("NASD") on June 30, 1993.

Claimant, Bruce Bart Allen's Submission Agreement was signed on December 29, 1992.

A Statement of Answer was filed with the NASD by Respondent, Sara Sharpe on February 3, 1994.

Respondent, Sara Sharpe's Submission Agreement was signed on January 24, 1994.

A Special Appearance Contesting Jurisdiction of the NASD and a Statement of Answer was filed with the NASD by Respondent, Malcolm Stockdale on February 3, 1994.

Respondent, Malcolm Stockdale did not file an executed submission agreement with the NASD.

A Statement of Answer was filed with the NASD by Respondent, Southwest Securities, Inc. on January 31, 1994.

Respondent, Southwest Securities, Inc.'s Submission Agreement was signed by Jerome S. Wade, Esq., Vice President and General Counsel on March 11, 1994.

Respondent, Texas Securities, Inc. did not file an answer to the Statement of Claim or a Submission Agreement (see below, Other Issues Considered and Decided).

Claimant, Bruce Bart Allen filed an Amended Statement of Claim with the NASD on July 31, 1995.

Respondent, Southwest Securities filed an Objection to Proposed Amendment to Statement of Claim of Bruce Bart Allen and Southwest's First Amended Answer to Statement of Claim with the NASD on August 3, 1995.

Respondent, Southwest Securities filed a Motion to Dismiss based upon the non-participation of certain necessary parties and/or waiver of claims by Claimant against such Defendants with the NASD on July 19, 1995.

Claimant, Bruce Bart Allen did not file a written response to Southwest Securities' motion to dismiss.

Respondent, Southwest Securities filed a Motion for Partial Summary Judgment and request to Submit the Remaining Issues on Written Documents Only with the NASD on September 5, 1995.

Claimant, Bruce Bart Allen filed a response to the Motion for Partial Summary Judgment with the NASD on September 6, 1995.

HEARING INFORMATION

Pre-Hearing Conferences were held on July 26, 1995 before all three (3) arbitrators for one (1) hearing session and on August 11, 1995 before all three (3) arbitrators for one (1) hearing session.

The hearing was held on December 10, 1995 for two (2) hearing sessions.

The hearing location was Dallas, Texas.

CASE SUMMARY

Claimant, Bruce Bart Allen ("Allen") alleged a claim for breach of contract and wrongful

taking of money and other property. Allen alleged that he was a former employee of Respondent, Texas Securities, Inc. ("Texas Securities") and that Respondents, Sara Sharpe ("Sharpe") and Malcolm Stockdale ("Stockdale") were the controlling persons of Texas Securities. Allen alleged that Respondent, Southwest Securities, Inc. ("Southwest Securities") was the clearing firm for Texas Securities.

Allen alleged that he was president and chief executive officer of Texas Securities until June 30, 1992 at which time he resigned these posts. Allen asserted that a written agreement was entered into between Texas Securities and Allen which in summary was to give Allen consideration for past services rendered to Texas Securities. Money and stock were delivered to accounts maintained by Allen at Texas Securities and thereafter these monies and stocks were transferred to securities accounts maintained by Allen at H.D. Vest. Allen alleged that since Texas Securities and H.D. Vest cleared through Southwest Securities, Texas Securities was somehow able to cause the money and securities to be returned from H. D. Vest to Texas Securities without authorization from either H.D. Vest or Allen. Thereafter, Allen alleged that Texas Securities took advantage of his financial circumstances to make him sign another agreement which called for payment of much smaller sums and that under economic duress, Allen entered into this agreement.

Southwest Securities alleged that it was the clearing broker-dealer for both H.D. Vest and Texas Securities and as such it would only act upon the instructions of its correspondents regarding individual customer accounts at the broker-dealers. Southwest Securities alleged that Allen was a customer of both Texas Securities and H.D. Vest and that employees of these two firms gave instructions to Southwest Securities regarding transactions in Allen's accounts. Southwest Securities alleged that Sharpe instructed Southwest Securities to transfer shares of Orbitron Capital Corporation ("Orbitron") from Allen's account at H. D. Vest to Allen's account at Texas Securities. Southwest Securities alleged that this action was taken in the ordinary course of business from a bona fide representative of Texas Securities to transfer the securities to the account from where they had originated and Southwest Securities thought this was done to correct an error in the original transfer. Southwest Securities alleged that any complaint Allen had was between himself and Texas Securities, Sharpe and Stockdale.

Sharpe alleged that Allen defrauded Texas Securities by classifying certain capital investments being made in Texas Securities as investment banking fees from which Allen was due compensation. Sharpe alleged that Texas Securities learned after Allen's departure that the "investment banking fees" paid to Allen related to the Orbitron stock included in the agreement entered into between Texas Securities and Allen were not fees being paid to Texas Securities for investment banking fees earned or to be earned. Instead, Sharpe alleged that the Orbitron stock provided to Texas Securities represented an investment in the capital of Texas Securities in an attempt to keep Texas Securities out of bankruptcy caused by the breach of fiduciary duty and fraud committed by past officers, including Allen.

Stockdale filed a special appearance to contest the jurisdiction of the NASD over him. Stockdale's answer to the claim was identical to Sharpe's answer.

Allen filed an Amended Statement of Answer in which he elected to dismiss Sharpe and Stockdale from the matter and proceed with his claim only against Southwest Securities (see below, Other Issues Considered and Decided).

Southwest objected to the amended claim. The basis for the objection was that Southwest Securities had a right of contribution and indemnity from Sharpe and Stockdale and it would be unfair for Allen to be able to drop these parties from the action on the eve of the arbitration. Southwest Securities asserted the affirmative defenses of waiver and estoppel in its amended answer to Allen's original claim.

RELIEF REQUESTED

Allen requested that Texas Securities, Sharpe, Stockdale and Southwest Securities be directed to pay him the money and property set forth in the original agreements or the reasonable value thereof at the time the agreements were created plus costs, reasonable attorney's fees and punitive damages as the panel deemed appropriate. In addition Allen requested that Southwest Securities be ordered to restore to Allen the property wrongfully removed from his H.D. Vest account.

Southwest, Stockdale and Sharpe requested dismissal of the claim in its entirety.

In Allen's amended statement of claim, he requested that Southwest Securities restore to him the following:

1. Cash in the amount of \$38,306.23;
2. The value of 17,500 shares of stock of Orbitron Capital Corporation at \$3.00 per share for a total of \$52,500.00;
3. Interest on the above amount at 10% from July 21, 1992 in the amount of approximately \$27,000.00; and,
4. Costs and reasonable attorney's fees of \$6,000.00.

Southwest Securities requested dismissal of the amended claim and recovery of its costs and attorney's fees from Allen.

OTHER ISSUES CONSIDERED & DECIDED

Texas Securities filed for bankruptcy protection during the week of January 9, 1994. Accordingly, Texas Securities was removed as a party to the proceeding.

In a pre-hearing conference before all three arbitrators on July 27, 1995, the panel heard oral argument on various items including discovery motions and a motion to dismiss asserted by Southwest Securities. Following the pre-hearing conference, the panel issued a ruling which denied Southwest Securities's Motion to Dismiss without prejudice. Allen was granted permission to file an Amended Statement of Claim with the NASD. Southwest Securities was given leave to file an objection to the proposed amended statement of claim within 10 days of its receipt from Allen. Sharpe and Stockdale were given leave to file a response to the amended claim.

Allen filed an amended claim with the NASD on July 31, 1995 in which he dismissed Respondents, Sharpe and Stockdale from the proceeding. Neither Sharpe nor Stockdale filed a response to this amended claim though they were given leave to do so by the panel. Southwest Securities objected to this amended claim and at a pre-hearing conference on August 11, 1995 after hearing oral argument, the panel determined to allow the amended claim and Sharpe and Stockdale were dismissed as parties to the proceeding. Therefore, Southwest Securities was the sole remaining party respondent in this matter.

Southwest Securities Motion for Partial Summary Judgment filed with the NASD on September 5, 1995 was decided by the arbitration panel on the parties' written submissions without hearing oral argument. The panel denied the motion without prejudice to reassert the motion at the hearing.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The amended claim asserted against Respondent, Southwest Securities, Inc. by Bruce Bart Allen is denied and dismissed in its entirety; and,
2. Other than forum fees which are addressed below, the parties shall each bear their own costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$200.00 non-refundable claim filing fee and the \$650.00 hearing session deposit previously paid to the NASD by Allen. Southwest Securities is assessed additional forum fees in the amount of \$2350.00.

Forum fees were calculated at the rate of \$750.00 per hearing session for each of two (2) pre-hearing conferences before three (3) arbitrators and two (2) hearing sessions for a total of \$3000.00. Additional Forum Fees assessed to the parties are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures
Name

/s/ Patrick Lanier
Patrick Lanier, Esq.
Presiding Chairperson
Public Arbitrator

December 29, 1995
Dated

/s/ Adrian Alter
Adrian Alter
Panelist
Public Arbitrator

January 2, 1996
Dated

/s/ Lyn Lane
Lyn Lane
Panelist
Industry Arbitrator

December 28, 1995
Dated

Date Award Served on the Parties by the NASD: January 2, 1996