

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Robert S.L. Warendorf

93-04287

Name of Respondent(s)

Bernard B. Beal
M.R. Beal & Company
MRB Securities Corporation

REPRESENTATION

For Claimant Robert Warendorf ("Claimant") appeared Bonnie P. Josephs, Esq., located in New York, New York.

For Respondent M.R. Beal & Co, MRB Securities Corporation and Bernard Beal ("Respondents") appeared Virginia Lazala of Lowenstein, Sandler Kohl located in Roseland, New Jersey.

CASE INFORMATION

Statement of Claim filed on: October 8, 1993.

Claimant's Submission Agreement signed on: October 5, 1993.

Statement of Answer and Counterclaim filed by Respondents on: February 8, 1994.

Respondent MRB Securities Corp.'s Submission Agreement signed on: February 9, 1994.

Claimant's Reply to Counterclaim filed on: March 2, 1994.

HEARING INFORMATION

Pre-Hearing Conference:	October 28, 1994	-	1 session
Hearing Dates/Sessions:	November 28, 1994	-	2 sessions
	December 8, 1994	-	1 session
	April 3, 1995	-	2 sessions
	April 4, 1995	-	2 sessions
	April 5, 1995	-	2 sessions
	April 6, 1995	-	2 sessions
	April 7, 1995	-	1 session
	April 10, 1995	-	2 sessions
	April 18, 1995	-	1 session

July 12, 1995	-	2 sessions
July 13, 1995	-	2 sessions
July 18, 1995	-	2 sessions
July 20, 1995	-	2 sessions
July 26, 1995	-	2 sessions
July 27, 1995	-	2 sessions
September 12, 1995	-	2 sessions
October 24, 1995	-	2 sessions

The hearings took place at the National Association of Securities Dealers, Inc.'s offices located in New York, New York.

CASE SUMMARY

Claimant alleged that in or February 1988 he started working with Respondent Beal based upon the representation that he would be a partner and earn "substantial" income as Managing Director for a securities firm to be formed, that he would have a long-term employment contract, and that he would have the benefit of the growth potential of a significant equity interest. According to the Claimant he relied upon these representations in accepting the position with the Respondents and in turning down other significant opportunities in favor of the Respondents' offer. Warendorf further contended that in spite of his performance of many jobs and services, the Respondents failed to pay Claimant any compensation in the period from February through May 1988, failed to offer the Claimant a reasonable and secure long-term employment agreement, failed to offer Claimant a significant equity in the firm or include the Claimant in the Partnership Agreement. In addition, the Claimant alleged that the Respondents knew that their representations and promises were false when they were made and were stated with the intent to deceive and defraud the Claimant.

Warendorf also contended that Respondent Beal informed him that as a Managing Director he would receive 5% common stock of MRB with part being an option payment. Although, as Claimant alleged, he paid \$51,000 for 5% of the common stock of MRB, the Respondents issued to Claimant certificates for 60% of the Warendorf Shares and never issued the remaining shares; nor did the Respondents deliver any certificates to the Claimant. In addition on or about July 1, 1988, according to Warendorf, the Respondents used undue influence to induce the Claimant to execute a shareholder's agreement (the "Shareholder's Agreement"). The Claimant maintained that the Shareholder's Agreement provides no benefit to the Claimant but, only benefits the Respondents. Warendorf also contended that the Respondents' failure to perform their promises and representations caused the failure of an express condition subsequent to the enforceability of the Shareholder's Agreement.

According to the Claimant in reliance on Respondents' representations and promises, Claimant gave the Respondents full use of his valuable contacts in the municipal bond industry, introduced the Respondents to substantially all of Claimant's municipal bond contacts, and turned over to the Respondents all business that Claimant developed through his contacts. Nonetheless, as alleged by Warendorf, the Respondents did not pay the Claimant for the use of his contacts or for the business that the Claimant developed for the Respondents.

In addition, the Claimant contended that after 1988 to in or about August 1990 the Respondents 1) did not give the Claimant notice of any Shareholders', Board of Directors', Partners', or Officers' meetings, 2) concealed from the Claimant the time, place, and purpose of all such meetings although the Claimant duly demanded such information, 3) failed and refused to give the Claimant any financial statements of MRB or Beal & Co., although duly demanded by the Claimant, 4) excluded the Claimant from business

meetings, executive decisions, and from participation in the work of Beal & Co., and MRB, 5) subjected the Claimant to constant discrimination and embarrassment, and 6) did not pay to the Claimant any significant bonuses or dividends, although Respondent Beal caused MRB to pay Beal and other officers substantial salaries, bonuses, and dividends.

The Claimant stated that on or about August 14, 1990 the Respondents informed him that his services were no longer needed and demanded that the Claimant resign his employment at the firm. The Claimant further alleged, upon information and belief, that although the Respondents represented in writing on the U-5 that the termination of the Claimant's employment was "voluntary", the Respondents knowingly, maliciously and recklessly prepared, signed, and filed a false and defamatory Termination Notice of and concerning Claimant to the effect that Claimant had been "discharged for cause." Warendorf also maintained that the Respondents did not exercise the option pursuant to the Shareholders Agreement to repurchase the Warendorf Shares within thirty days after the Claimant's "voluntary" termination. In addition, the Claimant alleged that on or about December 18, 1990 the Respondents notified him that the Warendorf Shares would be redeemed pursuant to the Shareholder's Agreement for "book value." However, as averred by Warendorf, the Claimant rejected the Respondents' notice to redeem the shares as violative of the provisions of the Shareholders Agreement and as less than the real value of the Warendorf shares.

The Claimant further contended that the Respondents conspired to discriminate against him, neglected to prevent discrimination against him, and discriminated against the Claimant in the terms, conditions, and privileges of employment and in compensation and promotion, and in terminating his employment based upon his race, color, and age. Therefore, Warendorf alleged that the Respondents violated his civil rights and his constitutional rights to equal treatment and equal property rights.

Respondents alleged the following affirmative defenses: 1) the Statement of Claim fails to state a claim upon which relief can be granted; 2) any claim that the Claimant may have had is barred due to the Shareholder's Agreement; 3) neither M.R. Beal & Company, MRB, Beal, nor any of respondents' officers, directors or employees engaged in any conduct with scienter; 4) any claim Claimant may have had is barred under the doctrine of equitable estoppel because the Claimant misrepresented facts to respondents regarding his professional abilities; 5) Claimant committed equitable and/or legal fraud by misrepresenting facts to respondents regarding his professional abilities, therefore, giving respondents grounds to rescind any alleged offer of long-term employment; 6) any claim Claimant may have had is barred by the statute of frauds; 7) any claim Claimant may have had is barred by the doctrines of waiver and laches; 8) Claimant had unclean hands because he misrepresented certain facts to respondents about professional abilities; 9) any claim Claimant may have had is barred by the parol evidence rule.

In addition the Respondents contended that the Claimant had falsely represented that he possessed the experience, training, expertise, and ability to handle specified responsibilities and tasks. Moreover, the Respondents alleged that the Claimant knew that these representations were false at the time they were made and that in reliance upon these fraudulent misrepresentations Beal offered the Claimant employment with M.R. Beal & Company. Furthermore, according to the Respondents, the Claimant failed to perform his duties and responsibilities. As a result, in their First Statement of Counterclaim the Respondents maintained that they suffered approximately \$500,000 in damages. In the Respondents' Second Statement of Counterclaim they contended that the Claimant's purported rejection of the duly tendered Promissory Note was a breach of the Claimant's obligation to sell his shares pursuant to the Shareholder's Agreement.

In response to the counterclaims the Claimant alleged that the Statement of Counterclaims each fail to state a cause of action on which relief may be granted by the court.

RELIEF REQUESTED

Claimant requested:

1. Rescission of the Shareholder's Agreement and restoration of the Claimant to his position proper to the execution of the Shareholder's Agreement;
2. Declaration that the Claimant is the holder of the Warendorf Shares (5% of the Outstanding Shares of Respondents MRB);
3. Appraisal and declaration of the value of the Warendorf Shares after restoration to MRB of any sums of which it was deprived by wrongful actions of Beal and Beal & Co;
4. Direction that Respondents pay to the Claimant an amount equal to his unpaid wages plus the appropriate statutory multiplier under New York State Labor Law and counsel fees and costs;
5. Declaration that the Claimant is entitled to recover from the Respondents, jointly and severally, relief in the amount of the value of the contacts and business he brought to the Defendants, namely \$500,000;
6. Compensatory damages in the amount of \$500,000 for Respondents' fraud practiced on the Claimant.
7. Declaration that Claimant is a limited partner of Beal & Co., and declaration that the value of said partnership interest and direction to the Respondents to pay the Claimant \$1,000,000 or the value of his said partnership interest in Beal & Co;
8. Reinstatement of Claimant to his position in MRB and Beal & Co., and an award for his lost wages in the amount of \$1,000,000 plus \$1,000,000 for pain and suffering and the deprivation of his civil and constitutional rights and for discrimination against him in the terms, conditions, and privileges of his employment plus counsel fees;
9. Special damages in the sum of \$1,000,000 and general damages in the sum of \$1,000,000 for Respondents' publication of libel of and concerning the Claimant;
10. Interest on the compensatory damages awarded plus the costs of suit; and
11. Such other relief and further legal, declaratory and other equitable relief as the Court deems just and proper.

The Claimant further requested, in response to the Counterclaims, dismissal of the Counterclaims, costs of this arbitration including attorneys' fees and such other and further relief as the Court deems just and proper.

Respondents requested:

1. Dismissal of the Statement of Claim in its entirety;
2. Compensatory damages in the amount of \$500,000 plus interest;
3. Punitive damages in the amount of \$500,000;

4. All litigation and arbitration costs, including attorney's fees; and
5. Such other and further relief as the Association deems just and proper.

OTHER ISSUES CONSIDERED & DECIDED

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 original(s) 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 Respondents are joint and severally liable to the Claimant Warendorf for the amount of **FIFTY ONE THOUSAND DOLLARS AND ZERO CENTS (\$51,000.00)** at 9% simple interest from February 1, 1988 until the date of payment.
2. The Respondents are joint and severally liable to the Claimant Warendorf for the amount of **TWENTY EIGHT THOUSAND DOLLARS AND ZERO CENTS (\$28,000.00)** at 9% simple interest from February 1, 1988 until the date of payment.
3. The Respondents are joint and severally liable to the Claimant for compensatory damages in the amount of **ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$100,000.00)**.
4. All forum fees are the responsibility of the Respondents jointly and severally.
5. All stock owned by Warendorf must be surrendered.
6. All other claims and counterclaims are denied.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

Non-refundable filing fee:	\$ 500.00
Non-refundable Counterclaim filing fee:	\$ 500.00
Hearing Sessions (31 @ \$1000 per session):	\$31,000.00
Pre-Hearing Sessions (1 @ \$300 per session):	<u>\$ 300.00</u>
Total Fees:	\$32,300.00

1. The claimant paid \$3,000 and owes nothing.

2. The Respondents are liable jointly and severally for all forum fees which total an amount of \$32,300.00. The Respondents owe \$3,000.00 to the Claimant and owe \$26,800.00 to the NASD.

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

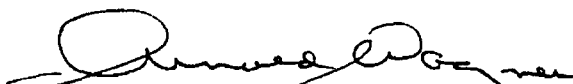
Concurring Arbitrators' Signatures

Henry H. Balter
Chairperson

Public

Domenick L. Natale, Esq.

Industry




Arnold Wagner

Public

AFFIRMATION

I, Arnold Wagner, Esq. do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter



Arnold Wagner

Date of Decision: January 5, 1996


2. The Respondents are liable jointly and severally for all forum fees which total an amount of \$32,300.00. The Respondents owe \$3,000.00 to the Claimant and owe \$26,800.00 to the NASD.

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

Concurring Arbitrators' Signatures

Henry H. Balter
Chairperson

Public



Domenick L. Natale, Esq.

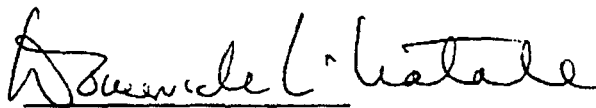
Industry

Arnold Wagner

Public

AFFIRMATION

I, Domenick L. Natale, Esq. do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter




Domenick L. Natale, Esq.

Date of Decision: January 5, 1996

2. The Respondents are liable jointly and severally for all forum fees which total an amount of \$32,300.00. The Respondents owe \$3,000.00 to the Claimant and owe \$26,800.00 to the NASD.

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


Concurring Arbitrators' Signatures


Henry H. Balter
Chairperson

Public


Domenick L. Natale, Esq.

Industry


Arnold Wagner

Public

AFFIRMATION

I, Henry H. Balter do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter


Henry H. Balter

Date of Decision: January 5, 1996