

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

SBTS Investment Group, Inc., and  
Schneider Securities, Inc.  
Claimants,

v.

No. 93-04476

Joel Preston, and  
Steven Varasteh  
Respondents

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**REPRESENTATION OF PARTIES**

Claimants SBTS Investment Group, Inc. and Schneider Securities, Inc. ("Claimants") were represented by Robert D. Mitchell, Esq., of the Law Offices of Robert D. Mitchell, P.C., Scottsdale, Arizona.

Respondent Steven Varasteh ("Varasteh") was represented by James P. Kneller, Esq., of the Law Offices of James P. Kneller, Scottsdale, Arizona.

Respondent Joel Preston ("Preston") failed to appear at the hearing.

**CASE INFORMATION**

Claimants' Statement of Claim was filed on or about October 27, 1993. Claimants' Submission Agreement was signed on October 6, 1993.

Varasteh's Statement of Answer was filed on or about October 25, 1994. The NASD does not have a record of Varasteh having filed a Submission Agreement.

Preston failed to file an Answer to the Statement of Claim, and failed to file a Submission to Arbitration.

**HEARING INFORMATION**

Hearing date: November 3, 1994. Two (2) sessions.

Hearing Location: Scottsdale, Arizona.

**CASE SUMMARY**

Claimants alleged that Respondents Varasteh and Preston (collectively referred to as "Respondents"): breached their contract with Claimants; breached an implied covenant of good faith and fair dealing; and tortiously injured Claimants' business reputation and wrongfully interfered with advantageous contractual relations. Claimants further alleged that, pursuant to a contract with the Respondents, Claimants are entitled to attorneys fees due to Respondents' alleged wrongful actions. The allegations arose out of an alleged breach of contract between the parties, alleged threats by Respondents to employees of Claimants, and alleged disparaging statements made by Respondents to Claimants' customers in an alleged attempt to solicit those customers to the Respondents' new firm.

In his Answer, unless admitted to therein, Varasteh denied the allegations contained in the Statement of Claim. In addition, Varasteh denied making any threats to personnel of Schneider Securities, and denied taking part in any course of conduct leading to such threats being made. Varasteh also denied signing copies of a letter listed in the Complaint as Exhibit 10. Specifically, Varasteh contended that his name was forged on the letter, and that until the filing of the complaint, he had never seen the letter. Lastly, Varasteh denied making any false or misleading statements with respect to Schneider Securities to clients of Schneider Securities or any other broker/dealer.

**RELIEF REQUESTED**

Claimant requested an award jointly and severally against the Varasteh and Preston for: At least \$11,260.04 in actual damages; at least \$10,000.00 for damages caused by tortious interference to their business; attorneys fees and costs of arbitration; such other and further relief as the arbitrators deem just under the circumstances.

Respondent Varasteh requested that Claimants' Complaint be dismissed in its entirety as against himself, and requests that the attorneys fees and costs incurred by Varasteh be awarded to him against Schneider Securities.

**OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made by the Claimants, the panel has determined that Respondent Preston has been properly served with the Statement of Claim pursuant to Sections 13 and 25 of the NASD Code of Arbitration Procedure (the

"Code"). The panel has also determined that Respondent has received due notice of the hearing as required under Section 26 of the Code, and that the arbitration of the matter would proceed pursuant to Section 29 of the Code.

Respondent Varasteh did not file with the NASD a properly executed submission to arbitration. Respondent Varasteh is required to submit to arbitration pursuant to Sections 8, and 12 of the Code. Respondent Varasteh has answered the claim, and has also appeared and testified at the hearing in this matter. Therefore, Respondent Varasteh is bound by the determination of the panel on all issues submitted.

On or about March 28, 1994, Claimants filed a Motion for Default Award or Alternatively an Order Barring Respondents From Presenting Defenses At Hearing. This motion along with Claimants' Motion for Order Barring Presentation of Witnesses and Exhibits By Respondents, filed with the NASD on October 31, 1994, were taken up by the panel on November 3, 1994. After hearing presentations by the parties on the motions, and deliberation, the undersigned arbitrators granted the motions as to Preston, and denied the motions as to Varasteh.

The parties present at the hearing have agreed that the Award in this matter may be executed by 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. Claimants claim for an award of \$10,028.82 is denied because the parties entitled to make that claim were not parties to this arbitration.
2. Respondent Joel Preston is liable for, and shall pay to the Claimants, the sum of \$5,000.00 as an award of compensatory damages, with interest at the legal rate from August 1, 1993, until paid.

#### OTHER COSTS

Each party shall bear their own costs and expenses incurred in connection with this arbitration, including attorneys' fees, except as set forth more fully below.

Respondent Joel Preston is liable for, and shall pay to the Claimants the sum of \$1,100.00 as an award of costs for this arbitration.

Respondent Joel Preston is liable for, and shall pay to Claimants the sum of \$2,212.50 as an award of attorneys fees. The authority for the award of attorneys fees can be found under Arizona Contract Law.

**FORUM FEES**

Pursuant to Section 44(c) of the Code, the following forum fees are assessed:

2 hearing sessions x \$600.00 = \$1,200.00

Pursuant to Section 44(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$500.00, and shall RETAIN the hearing session deposit in the amount of \$600.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$600.00 are assessed against the Claimants.

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

**CONCURRING ARBITRATORS**

Dated:

Name:

November 11, 1994

James B. Vessey/s/  
James B. Vessey  
Presiding Chair  
Industry Arbitrator

November 12, 1994

John A. Finical/s/  
John A. Finical  
Industry Arbitrator

November 11, 1994

William E. Saufley/s/  
William E. Saufly  
Industry Arbitrator

Date of Service by the NASD:

11/21/94