

## NASD REGULATION AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Wheat First Securities, Inc.

94-00835

Name of Respondent

Darrell Beahon

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**REPRESENTATION**

For claimant Wheat First Securities, Inc. ("claimant") appeared Nicholas P. Vari, Esq. of the law firm of Kirkpatrick & Lockhart located in Pittsburgh, Pennsylvania.

For respondent Darrell Beahon ("respondent") appeared Jon R. Perry, Esq. of the law firm of Betts & Perry located in Pittsburgh, Pennsylvania.

**CASE INFORMATION**

Statement of Claim was filed on March 1, 1994. Claimant's Submission Agreement was signed on February 28, 1994.

Statement of Answer was filed on June 1, 1994. Amended Answer and Counterclaim was filed on May 30, 1995. Respondent's Submission Agreement was signed on June 8, 1994.

**HEARING INFORMATION**

Pre-Hearing Conference: February 24, 1997 - One Arbitrator

Hearing Date/Sessions: May 19, 1997 - Two Sessions

The hearing was conducted at the William Penn Hotel located in Pittsburgh, Pennsylvania.

**CASE SUMMARY**

Claimant alleged that respondent executed a Financial Consultant Trainee and Non-Competition

Agreement (the "Agreement") and that, in reliance upon respondent's commitment to comply with the terms of the agreement, it accepted respondent for Financial Consultant training. Claimant further alleged that, on or about March 15, 1993 and without prior notice, respondent resigned and advised his branch manager that it was his intention to go work for another securities firm.

Claimant alleged that respondent breached the terms of his agreement when he voluntarily resigned his position and took a similar position with another firm within three years of completing the training course. Claimant further alleged that respondent fraudulently concealed his employment with another firm and by the means of such subterfuge fraudulently obtained the use of its records and facilities to Wheat's detriment and to the benefit of respondent's new firm. Claimant maintained that, at least as early as March 10, 1993, respondent had taken employment with another firm and was actively soliciting Wheat's customers.

Respondent alleged that, on March 8, 1993, he gave his branch manager two weeks notice that he would be leaving for a position with another firm, but that on, March 9, 1993, he discovered that all of his account cards had been pulled and he was locked out of his computer terminal. In his amended answer and counterclaim, respondent maintained that claimant was not entitled to the \$10,000 claimed by it because it terminated his employment prior to the effective date of his resignation, because it constituted liquid damages that are not recoverable, and because claimant was selectively enforcing the penalty provision of the agreement. Respondent also maintained that claimant cannot recover on its fraud claim because it did not plead and cannot prove the elements of such a claim, because, even if the alleged misconduct occurred, such conduct would not give rise to a cause of action for fraud and because claimant is unable to establish an underlying right to recover for fraud.

As his counterclaims, respondent alleged defamation, tortious interference with existing and prospective business relations, breach of contract for limiting of the geographical scope of his customer relationships, and breach of contract for failure to pay the compensation to which was entitled for the period from February 1, 1993 through March 8, 1993.

#### **RELIEF REQUESTED**

Claimant requested an award of \$85,000.00, representing \$10,000.00 in compensatory damages based on the breach of contract claim and \$75,000.00 in punitive damages based on respondent's fraudulent conduct, and such other relief as may be appropriate.

Respondent requested on his first claim for defamation that he be awarded compensatory damages in the amount of \$100,000.00 and punitive damages in an amount deemed appropriate by the panel. On his claim for tortious interference with existing and prospective business relations, respondent requested that he be awarded damages in an amount appropriate to compensate for claimant's interference with his customer relationships, and punitive damages in an amount deemed appropriate by the panel. On his third claim for breach of contract, respondent requested that he be awarded damages in the amount of \$126,923.00. On his fourth claim for breach of contract, respondent requested that he be awarded damages in the amount for which he is entitled to be paid as compensation by claimant for the period from February

1, 1993 through March 8, 1993.

### **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 originals remain on file with the NASD Regulation, Inc.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent be and hereby is liable and shall pay claimant the sum of \$10,000.00.
2. Claimant's claim for fraudulent conduct and request for punitive damages are denied.
3. Claimant be and hereby is liable and shall pay respondent the sum of \$662.77, representing unpaid commissions.
4. Respondent's claims for defamation, tortious interference and his third claim for breach of contract are hereby denied.
5. Each party shall bear their respective costs, including attorneys' fees.
6. All other claims are denied.

### **FORUM FEES**

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 filing fee previously paid by claimant and have assessed the following forum fees:

1 pre-hearing conference	= \$ 300.00
2 hearing sessions x \$600.00	= <u>\$1,200.00</u>
Total forum fees	= \$1,500.00

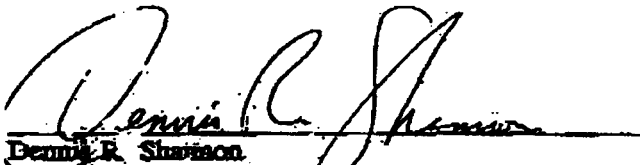
Forum fees assessed against:

1. Claimant be and hereby is liable for the sum of \$750.00, representing one-half of the total amount of forum assessed. Claimant previously deposited \$600.00 with NASD Regulation, Inc. and, therefore, claimant is liable and shall pay \$150.00.

2. Respondent be and hereby is liable for and shall pay the sum of \$750.00.

Fees are payable to the NASD Regulation, Inc.

Arbitrators' Signatures

  
Dennis R. Shannon  
Chamberson-Industry Arbitrator

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Carl Holsthausen  
Industry Arbitrator

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Paul H. McKenna  
Industry Arbitrator

Date of decision: July 29, 1997

2. Respondent be and hereby is liable for and shall pay the sum of \$750.00.

Fees are payable to the NACD Regulation, Inc.

Arbitrators's Signatures

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Dennis R. Shannon  
Chairperson-Industry Arbitrator



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Carl Helmsbaum  
Industry Arbitrator

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Paul H. McKenna  
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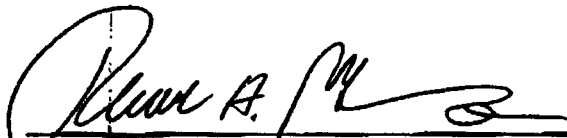
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