

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

John J. Sexton

NASD Arbitration  
No. 94-02388

vs.

Name of Respondent

Barry Parr

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REPRESENTATION

For Claimant John J. Sexton, Tustin, California: Appearance in pro per

For Respondent Barry Parr, Laguna Hills, California: Appearance in pro per

CASE INFORMATION

Statement of Claim filed: June 13, 1994

Claimants' Submission Agreement signed: July 26, 1994

Statement of Answer filed: None

Respondent's Submission Agreement signed: None

HEARING INFORMATION

Hearing Date(s)/Session(s): August 8, 1995 (one session)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant alleged he is and has been from about March, 1987 through the present associated with Titan/Value Equities Group, Inc. as a General Securities Principal. He further alleged Respondent was associated with Aegon USA Securities, Inc. from about October 1992 through January 1994 in that firm's Burbank, California branch office as a General Securities Representative. Claimant asserted that during his association with Aegon,

Respondent was also employed at Lockheed Federal Credit Union, an affiliate of Aegon. He also alleged from about December 15, 1992 through about January 12, 1994, Claimant and Respondent had an arrangement whereby Claimant opened new accounts at his firm for ten public customers of Respondent; the orders for such customers were executed through Claimant's firm; Claimant and Respondent, without the knowledge of their respective employers, split the commissions, Respondent receiving 80%, and Claimant receiving 20%. Claimant alleged that pursuant to such arrangement, Claimant paid Respondent \$21,432.81.

Claimant and Respondent were each subsequently the subjects of separate disciplinary proceedings brought by the N.A.S.D. District Business Conduct Committee for District No. 2. Claimant and Respondent each consented to separate Orders of Settlement and each is currently subject to same as set forth below:

The Order of Settlement relating to Claimant Sexton recites that he has paid his employer, Titan, all commissions he received - approximately \$5,355.93; and that he has also obligated himself to pay Titan the amount of commissions received by Respondent Parr in the amount of \$21,432.81. In addition, Claimant was censured, fined in the amount of \$5,000, and ordered to re-qualify by examination as a General Securities Principal before acting in such capacity. Claimant testified that he has paid both the \$5,000 fine and the \$21,432.81.

The Order of Settlement relating to Respondent Parr provided that he be censured, barred from associating with any member of the NASD in any capacity with the right to reapply in ten years, and fined in the amount of \$31,432.81 (being an assessment of \$10,000, plus the amount - \$21,432.81 - equal to the total commissions received by him). The fine collection efforts by the NASD are suspended unless and until Respondent seeks to again become associated with an NASD member. Payment of the fine is stated to be a prerequisite for any application by Respondent for association with any member of the NASD. To date, no part of the fine has been paid.

### **RELIEF REQUESTED**

Claimants' requested damages include the amount of commissions he paid to Respondent - \$21,432.81 - plus interest thereon, his expenses in filing this claim and reimbursement of \$190.00 he paid to a private process server. Claimant expressly seeks no reimbursement of the fine imposed upon him by the NASD District Business Conduct Committee.

### **SPECIAL FINDINGS**

The undersigned arbitrators submit the following findings with respect to this award:

A. Although Respondent failed to answer the Statement of Claim and failed to execute and file his Submission Agreement, he received due notice of this proceeding and of his right to respond to the Statement of Claim. His failure to do so was voluntary. This

Award is not made based upon his failure to respond; rather the arbitrators have required both parties, present at the hearing, to submit such evidence as the arbitrators require for the making of an Award.

B. Both parties expressly waived their respective rights to be represented by counsel, although they were advised by the panel that they have the right to request counsel at any stage in the proceedings.

C. The District Business Conduct Committee's decision and order of acceptance of offer of settlement relating to Respondent Parr does not require any reimbursement to Claimant Sexton. Nor does it require payment (to the NASD) of the fine. unless and until Respondent Parr may seek to become reassociated with the NASD, which he cannot do in any event for a period of ten years.

D. Claimant and Respondent were equally responsible in their entering into their agreement to share commissions in violation of NASD rules.

### **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:

In satisfaction of Claimant's claims, Respondent Barry Parr is liable for and shall pay to Claimant the sum of \$10,716.41, and shall reimburse Claimant the sum of \$700.00 for NASD filing and surcharge fees, and \$190.00 expended by Claimant for service of documents upon Respondent, for an aggregate of \$11,606.41, together with annual interest computed at 7% of said sum from and after March 22, 1995.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain \$700 of the \$800 paid by Claimant, which \$700 includes the non-refundable filing fee of \$100, the hearing deposit of \$400 and the Section 45 surcharge of \$200. Respondent Parr is liable for and shall pay to Claimant \$700, calculated as follows:

Total Forum Fees: One session at \$400 per session

Non-refundable Fee: \$100

Section 45 surcharge: \$200

## ARBITRATORS

Name

Public/Industry

Marvin Greene (Chairperson)

Public Arbitrator

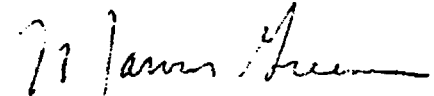
Joseph Novak

Public Arbitrator

Charles Graham

Industry Arbitrator

### Presiding Arbitrator Signatures



Marvin Greene

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Joseph Novak

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Charles Graham

Date of Decision: August 13, 1995

Date Served: 9/18/95