

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Chemical Securities, Inc.

94-04230

Name of Respondent(s)

M.J. Whitman L.P.

REPRESENTATION

For Claimant Chemical Securities Inc., ("Chemical Securities") appeared Stephen L. Ratner, Esq., of Rosenman & Colin located in New York, New York.

For Respondent M.J. Whitman, L.P., ("Whitman") appeared Evan L. Gordon, Esq., located in New York, N.Y.

CASE INFORMATION

Statement of Claim filed on: October 12, 1994.

Claimant's Submission Agreement signed on: October 7, 1994.

Statement of Answer filed by Respondent Whitman on: December 14, 1994

Respondent Whitman's Submission Agreement signed on: December 7, 1994.

HEARING INFORMATION

Hearing Dates/Sessions:	November 6, 1995	-	2 sessions
	November 7, 1995	-	1 session

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

CASE SUMMARY

Claimant Chemical Securities alleged that on July 26, 1993 Whitman approached Chemical Securities with an offer to sell Repap Enterprises Floating Rate Notes ("Repap Notes" or "Notes"). According to the Claimant, after several telephone conversations between Whitman's and Chemical Securities' traders, Chemical Securities agreed to purchase \$2,000,000 face value of the Repap Notes on the condition that Whitman deliver the Repap Notes via Euroclear. In addition, the Claimant stated that Whitman agreed to sell the Repap Notes to Chemical Securities via Euroclear at \$73 3/4 and provided Chemical Securities with Whitman's Euroclear number. The claimant maintained that on the same day that Whitman agreed

to sell the Repap Notes to Chemical Securities, the Claimant agreed to sell to Fidelity-Magellan Fund ("Fidelity") \$2,000,000 face value of the Repap Notes at \$74 1/4. Fidelity, according to the Claimant, required that the Repap Notes be Euroclear eligible.

The Claimant alleged that as of the settlement date, August 5, 1993, Whitman failed to deliver Euroclear eligible Repap Notes and instead attempted to deliver the physical Notes. Furthermore, the Claimant maintained that it repeatedly refused the delivery because the physical Notes were not Euroclear eligible. The Claimant also stated that between September and December 1993 Chemical Securities repeated its requests for delivery of Euroclear eligible Notes and attempted to work with Whitman to clear up the problem.

Then in December 1993, as alleged by the Claimant, Fidelity agreed to accept the physical Notes instead of those which were Euroclear eligible. The Claimant contended that when it advised Whitman of this new development and tried to get the physical notes, Whitman refused to deliver the Notes and claimed that the trade had been canceled in September, 1993.

According to Chemical Securities, when repeated attempts to resolve this issue failed Chemical Securities sent Whitman a Notice of Buy-in (the "Notice"). In response, the Claimant maintained that Whitman claimed that the trade had been canceled in September 1993. The Claimant stated that it informed Whitman that it had not agreed to cancel the trade and that it had no record of receiving any purported notice of cancellation. The Claimant contended that on April 14, 1994 it bought-in \$2,000,000 face value of the Notes for Whitman's account and incurred a loss of \$196,823.63.

Respondent alleged that in July 1993 it purchased from a customer \$2 million face value of Repap Notes and that at or about the time of the purchase it sought a purchaser for the notes. According to the Respondent, in attempting to find a buyer it contacted the Claimant. Respondent also contended that on July 26, 1993 it sold the Notes to the Claimant on the condition that the trade was to settle by Euroclear. In August 1993, according to the Respondent, upon learning that the Notes were in physical form it informed the Claimant. Moreover, the Respondent maintained that Chemical Securities stated that it could accept the Notes in this form so long as the Notes were not privates. In addition, Whitman contended that shortly after the Claimant agreed to accept the Notes, the Claimant changed his mind and stated that it could not take the Notes unless they were through Euroclear.

The Respondent further alleged that after attempts to engage in a swap transaction failed, the trade was canceled in September 1993. Whitman maintained that a cancellation notice was sent to the Claimant by Bear Stearns, the Respondent's clearing firm, and the Claimant did not object to the cancellation or otherwise respond. In addition, the Respondent alleged that after the cancellation notice was sent, no conversations ensued between representatives of the Respondent with respect to this problem. Whitman maintained that because the trade was canceled in September 1993, it was not required to deliver the physical Notes when the Claimant requested them in December 1993. In addition, the Respondent contended that the buy-in notice was unwarranted because the trade was canceled.

RELIEF REQUESTED

Claimant requested an award in the amount of \$196,823.63. In addition the Claimant requested the costs of collection incurred in this arbitration, including its attorneys' fees and disbursements.

Respondent requested an award of no damages to Chemical Securities in connection with its Claim. An award to Whitman of the costs and expenses of this proceeding, including attorneys' fees and such other and further relief as is 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 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. All claims are dismissed in their entirety.
2. All forum fees are to be divided equally between the parties.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Non-refundable filing fee:	\$ 500.00
Hearing Sessions (\$750.00 per each session):	<u>\$2,250.00</u>
Total Fees:	\$2,750.00

1. Claimant paid \$1,250.00 and owes \$125.00 to the NASD.
2. Respondent has paid nothing and owes \$1,375.00 to the NASD.

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

Concurring Arbitrators' Signatures

Name

Mark R. Greenberg
Mark R. Greenberg

Industry

William E.S. Browning, Esq.

Industry

Dissenting Arbitrator

Michael E. Silverman, Esq.

Industry

AFFIRMATION

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

Mark R. Greenberg
Mark R. Greenberg

Date of Decision: November 27, 1995

Concurring Arbitrators' Signatures

Name

Mark R. Greenberg

Industry

W.E.S. Browning

William E.S. Browning, Esq.

Industry

Dissenting Arbitrator

Michael E. Silverman, Esq.

Industry

AFFIRMATION

I, William E.S. Browning, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

W.E.S. Browning

William E.S. Browning, Esq.

Date of Decision: November 27, 1995

Concurring Arbitrators' Signatures

Name

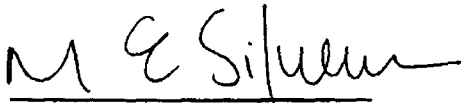
Mark R. Greenberg

Industry

William E.S. Browning, Esq.

Industry

Dissenting Arbitrator



Michael E. Silverman, Esq.

Industry

AFFIRMATION

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



Michael E. Silverman, Esq.

Date of Decision: November 27, 1995