

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Philip C. Mount

and

NASD Case Number 95-00270

Names of Respondents

Traders & Dealers, Incorporated (f/k/a The Trading Desk, Incorporated),
Michael D. Cox,
Short-Cox Company
and Jerry Short

Name of Third-Party Respondent

Jerry Short

REPRESENTATION OF PARTIES

Claimant, Philip C. Mount was represented by Timothy M. McDaniel, Esq. of McDaniel & Associates located in Houston, Texas.

Respondents, Traders & Dealers, Inc. was represented by Bobbie G. Bayless, Esq. of Bayless & Stokes located in Houston, Texas.

Respondents, Michael D. Cox, Short-Cox Co. and Jerry Short were represented by Hugh McKenney, Esq. and Joel Jesse, Esq. of McKenney & Jesse, P.C. located in Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about January 17, 1995.

An Amendment to the Statement of Claim was filed on or about June 7, 1995.

The Submission Agreement of Claimant was signed on January 13, 1995.

The Statement of Answer and Cross-Claim against Michael D. Cox and Short-Cox Company of Traders & Dealers, Inc. was filed on or about March 16, 1995.

The Statement of Answer of Traders & Dealers, Inc. to the Cross-Claim submitted by Jerry Short was filed on or about September 1, 1995.

The Submission Agreement of Respondent, Traders & Dealers, Inc. was signed on March 15, 1995 by Jerry W. Manning, President.

The Statement of Answer of Respondent, Michael D. Cox was filed on or about April 8, 1995.

The Submission Agreement of Respondent, Michael D. Cox was signed on March 28, 1995.

The Response to the Cross-Claim of Traders & Dealers by Michael D. Cox was filed on or about April 6, 1995.

The Counter-Claim against Traders & Dealers, Inc. of Respondent, Jerry Short was filed on or about July 13, 1995.

The Submission Agreement of Jerry Short was signed on July 6, 1995.

HEARING INFORMATION

A pre-hearing conference was held on November 10, 1995 for one (1) pre-hearing session before one (1) arbitrator.

The hearing was held in Houston, Texas on the following dates:

- November 13, 1995 for two (2) sessions
- November 14, 1995 for two (2) sessions
- November 15, 1995 for three (3) sessions

for a total of seven (7) hearing sessions.

CASE SUMMARY

In the Statement of Claim, Philip C. Mount ("Mount") alleged that Traders & Dealers, Inc. f/k/a The Trading Desk, Inc. ("Traders & Dealers"), Michael D. Cox ("Cox"), Jerry Short ("Short") and Short-Cox Company ("Short-Cox") breached their agreements with Mount which provided that Claimant would receive 50% of the gross commissions earned. Mount was employed from June 9, 1994 until September 21, 1994 by Traders & Dealers which was managed by Cox. As alleged, Cox was also one of the principals in Short-Cox which was formed for the purposes of receiving commissions on behalf of Cox and Short and operating the Traders & Dealers Houston office. Pursuant to agreements concerning the nature of relationships and commissions to be paid, Mount allegedly placed orders in July, 1994 totaling \$18,255.95 and received a 50% gross commission for the orders. The Claimant contended that since he placed orders through Traders & Dealers in August, 1994

totaling \$16,136.25 and on September 15, 1994 totaling \$16,107.20, he should have been paid 50% gross commissions for each transaction. Mount claimed that he was only paid \$2,500.00 for these trades. The Claimant made specific allegations against the Respondents including, but not limited to, breach of contract and common law fraud. Mount contended that one or more of the Respondents had possession of the commissions but was refusing to turn them over to Mount, and each Respondent insisted that the commissions were in the hands of one of the other Respondents. Despite demand, Mount has not received the alleged balance owed in commissions.

In its Answer, Cross-Claim and Third-Party Claim, Traders & Dealers, Inc. f/k/a The Trading Desk, Inc. denied the allegations set forth in the Statement of Claim alleging that Mount was never an employee of Traders & Dealers. On June 16, 1994, Mount allegedly executed an Independent Contractor's Agreement with Traders & Dealers which, in part, provided that Mount assigned 100% of his commissions earned under the Agreement to Michael D. Cox. In early 1994, Traders & Dealers, Cox, Short-Cox and Grantham Financial ("Grantham") allegedly entered into an agreement called the Houston Office Agreement which was intended to establish a business arrangement whereby Cox would manage a Houston Office for Traders & Dealers. Also, in early 1994, a Management Agreement was executed by Cox, Short-Cox and Grantham concerning management of the office and Cox executed an Independent Contractor's Agreement with Traders & Dealers. Traders & Dealers loaned Cox \$90,000.00 to assist with initial expenses for which a Promissory Note was signed by Cox's former attorney. In addition, Traders & Dealers were required by the landlord for the office leased by Short-Cox to guarantee one-half of the amount owed pursuant to the lease. In order to induce Traders & Dealers to execute that guaranty, Short-Cox was required by Traders & Dealers to execute a Guaranty to Traders & Dealers of any amounts the landlord sought from Traders & Dealers. As alleged, Short-Cox defaulted on the terms of the lease so the landlord has filed a lawsuit in court to recover approximately \$42,023.49 plus interest. In August or September, 1994, after Traders & Dealers and Grantham indicated they could no longer continue to loan funds, Cox Short and Short-Cox allegedly began a new operation ignoring their obligations to Traders & Dealers and Grantham and either removed property or allowed property belonging to Traders & Dealers to be removed from the leased premises. In addition, the phone company for the leased property allegedly filed a lawsuit against Traders & Dealers for payments owed. Traders & Dealers made other specific allegations against Cox, Short and Short-Cox including breach of contract, common law fraud, negligence and negligent misrepresentation.

Respondent, Michael D. Cox denied all allegations of wrongdoing asserted by Claimant, Philip C. Mount and by Respondent, Trading & Dealers alleging that any obligation on his part to pay Mount was conditioned upon his receipt of commissions from Traders & Dealers which had not paid the monies owed to him. In his Cross-Claim against Traders & Dealers, Cox alleged that Traders & Dealers breached its contractual obligations to him by failing to pay him commissions on trades.

Respondent and Third-Party Respondent, Jerry Short ("Short") denied all of the allegations and alleged that Traders & Dealers breached its contractual obligations by failing to pay Short's salary,

RELIEF REQUESTED

Claimant, Philip C. Mount requested an award in the amount of \$13,621.73 in actual damages plus punitive damages in an amount of not less than three times the actual damages as well as attorneys' fees.

Respondent, Traders & Dealers, Inc. requested that the claims asserted against it be denied in their entirety and that it be awarded approximately \$380,000.00 in actual damages as well as property of Traders & Dealers, liabilities from the lawsuits, punitive damages, costs and attorneys' fees against Cox, Short and Short-Cox.

Respondent, Michael D. Cox requested that the claims asserted against him be denied and requested an award against Traders & Dealers for approximately \$100,000.00 in actual damages plus punitive damages and attorneys' fees.

Respondent and Third-Party Respondent, Jerry Short requested an award in the amount of approximately \$150,000.00 in actual damages.

OTHER ISSUES CONSIDERED & DECIDED

Respondent, Short-Cox Company did not file an executed submission agreement or an answer, but appeared and testified at the hearing through their counsel. Pursuant to Section 12 of the Code of Arbitration Procedure, the arbitrators determined that the Respondent, Short-Cox Company submitted to arbitration.

At the hearing, the parties stipulated that Traders & Dealers, Inc. f/k/a The Trading Desk, Inc. would be a party to this action. The Trading Desk, Inc. became Traders and Dealers, Inc. on or about August 1, 1995.

Third-Party Respondent, Jerry Short filed an request for leave to file a Cross-Claim against Traders & Dealers on or about June 2, 1995. After reviewing the request and all responses, the arbitrators decided that the request was granted.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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. Respondent, Traders & Dealers, Inc. (f/k/a The Trading Desk, Inc.) is hereby liable for and shall pay to the Claimant, Philip C. Mount the sums of \$13,621.00 in actual damages, \$817.00 in interest, \$4,331.00 in attorneys' fees and \$550.00 for expenses. In determining to award attorneys' fees, the arbitrators considered the pleadings, the evidence and the testimony presented by the parties;
2. Short-Cox Company and Michael D. Cox are jointly and severally liable and shall pay to Traders and Dealers, Inc. (f/k/a The Trading Desk, Inc.) for the sums of \$44,000.00 and \$19,319.00 or a total of \$63,319.00;
3. The claims of Michael D. Cox and Short-Cox Company against the Trading Desk, Inc. are hereby denied in their entirety;
4. The claims of Jerry Short against The Trading Desk, Inc. are hereby denied in their entirety;
5. The claims of the Trading Desk, Inc. against Jerry Short are hereby denied in their entirety;
6. All requests for relief not specifically granted herein are hereby denied; and
7. The parties shall bear their own costs including attorneys' fees except for those specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300.00 for each pre-hearing conference. There were seven (7) hearing sessions x \$1,000.00 plus one (1) pre-hearing session x \$300.00 = \$7,300.00 in forum fees. Pursuant to Section 44(b) of the Code of Arbitration Procedure, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 44(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$500.00 and shall retain as forum fees the hearing session deposit in the amount of \$600.00 previously deposited with the NASD by the Claimant, Philip C. Mount. In accordance with Section 44(e) and 45 of the Code, the NASD shall retain the non-refundable fee in the amount of \$500.00, the hearing session deposit in the amount of \$750.00 and the \$200.00 member surcharge previously submitted by Respondent Traders & Dealers, Inc. f/k/a The Trading Desk, Inc. The NASD shall also retain as forum fees the non-refundable filing fee in the amount of \$500.00 and the hearing session deposit in the amount of \$1,000.00 previously deposited by Respondent, Jerry Short.

Claimant, Philip C. Mount is hereby liable for and shall pay to the NASD the sum of \$860.00 in additional forum fees. Respondent, Traders & Dealers, Inc. f/k/a The Trading Desk, Inc. is hereby liable for and shall pay to the NASD the sum of \$710.00 in additional forum fees. Respondent, Michael Cox is hereby liable for and shall pay to the NASD the amount of \$1,460.00 in forum fees. Respondent, Short-Cox Company is hereby liable for and shall pay to the NASD the sum of \$1,460.00 in forum fees. Respondent, Jerry Short is hereby liable for and shall pay to the NASD the amount of \$460.00 in additional forum fees.

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

Arbitrators' Signatures:

Dated:

Douglas F. Pierce, Esq.
Douglas F. Pierce, Esq.
Public Arbitrator, Presiding Chair

January 9, 1996

Wayne J. Baxmann
Wayne J. Baxmann
Public Arbitrator

January 9, 1996

Thomas A. Thornhill, Jr.
Thomas A. Thornhill, Jr.
Industry Arbitrator

January 9, 1996

Date served by the NASD: January 19, 1996