

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Principal Financial Securities, Inc.

and

95-00621

Name of Respondent

Rauscher Pierce Refsnes, Inc.

Glenn Dean Childres

Jerry Lee Travers

REPRESENTATION OF PARTIES

Principal Financial Securities, Inc. ("**Claimant**") was represented by William J. Albright, Esq., Figari & Davenport, L.L.P., Dallas, Texas and Brian J. Hurst, Esq., Principal Financial Securities, Inc., Dallas, Texas.

Rauscher Pierce Refsnes, Inc. ("**Respondent Rauscher**"), Glenn Dean Childres ("**Respondent Childres**") and Jerry Lee Travers ("**Respondent Travers**") were represented by Richard A. Sayles, Esq., and Steven E. Aldous, Esq., Sayles & Lidji, Dallas, Texas and James T. Ritt, Esq., Rauscher Pierce Refsnes, Inc., Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about February 7, 1995. Claimant's Reply to Counterclaim was filed on or about February 24, 1995. Submission Agreement of **Claimant** was signed on February 3, 1995 by Brian J. Hurst.

Statement of Answer and Counterclaim was filed by Respondents **Rauscher**, **Childres** and **Travers** on or about February 17, 1995. Submission Agreement of Respondent Glenn Dean Childres was signed on February 10, 1995. Submission Agreement of Respondent Jerry Lee Travers was signed on February 10, 1995.

HEARING INFORMATION

The hearing was held on Thursday, March 2, 1995 in Dallas, Texas for two (2) sessions, Friday, March 3, 1995 for two (2) sessions, Monday, March 6, 1995 for two (2) sessions, Tuesday, March

7, 1995 for two (2) sessions, Wednesday, March 8, 1995 for two (2) sessions and Thursday, March 9, 1995 for two (2) sessions for a total of twelve (12) sessions.

CASE SUMMARY

Claimant alleged that Respondent Rauscher induced Respondents Childres and Travers to breach their fiduciary duties to it and to misappropriate its' trade secrets, with promises of large up front payments and other financial inducements. Specifically, Claimant alleged that personnel of Respondent Rauscher worked closely with Respondents Childres and Travers and their sales assistants for several weeks prior to their resigning from Principal to copy and remove confidential customer information from the Principal's Tyler, Texas branch office and to solicit customers to transfer their accounts from Principal to Rauscher upon the resignation of Childres and Travers. The specific causes of action alleged in the Statement of Claim include: misappropriation of trade secrets including but not limited to customer information contained on computer disks, customer files, and holding and cross-reference books copied and/or removed from Principal's Tyler branch office; breach of fiduciary duty by Respondents Childres and Travers by cooperating with Rauscher in misappropriating trade secrets and soliciting Principal's clients, and enlisting their sales assistants while remaining in the employ of Principal; and tortious interference with contractual obligations of Respondents Childres and Travers not to disclose trade secrets to competitors.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated beginning in 1994, Respondent Rauscher contacted several brokers from various brokerage firms about the possibility of establishing a Tyler, Texas office, including Respondents Childres and Travers. Respondents further stated that Respondents Childres and Travers resigned their positions on February 1, 1995 and at that time, they took copies of various documents reflecting information about their clients. It was stated that Respondents Childres and Travers took copies of documents so that they could inform their clients of their move to Respondent Rauscher and invite them to transfer their accounts.

RELIEF REQUESTED

Claimant requested an award of compensatory damages from Respondents in an amount in excess of \$1,000,000 for the effective destruction of the economic viability of its Tyler branch office; an award of punitive damages in excess of \$1,000,000 from Respondent Rauscher as punishment for its premeditated and predatory competitive practices; a pre-hearing injunction, to be made final upon the hearing of this matter, ordering Respondents to:

immediately return to Principal and cease to use all customer information removed from Principal's Tyler branch office, and any copies thereof, whether on computer disk, paper, or otherwise;

- . cease and desist from soliciting customers of Principal's Tyler branch office to transfer their accounts to, or do business with, Respondent Rauscher;
- . cease and desist from soliciting or accepting account transfer forms from customers of Principal's Tyler branch office;
- . cease and desist from recruiting or hiring other employees of Principal for a period of not less than one year; and
- . cease and desist from any action which would indirectly result in a violation of items (1) through (4) above.

Respondent requested that the claims asserted against them be denied in their entirety and that they be awarded the relief requested by them.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Rauscher Pierce Refsnes, Inc. did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §8 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and offered testimony at the hearing is bound by the determination of the arbitration panel on all issues submitted.

At the commencement of the hearing of this matter, Claimant filed an Application for Immediate Injunctive Relief. After reviewing the request and the Response to Claimant's Application for Injunctive Relief and hearing argument of the parties, the undersigned arbitrators decided to extend the Temporary Injunction entered by the 298th Judicial District Court of Dallas County, Texas.

The panel's Order extending temporary injunctive relief entered March 2, 1995 and the agreement between Claimant and Respondents of March 3, 1995 is hereby revoked.

Any and all copies of client books that had been returned to Principal by Respondents shall be returned to Respondents Childres and Travers no later than 12:00 p.m. (noon), Tuesday, March 14, 1995.

Any and all personal client files developed and maintained by Respondents Childres and Travers of those clients that have transferred or will be transferred to Respondent Rauscher Pierce Refsnes, Inc. at the clients request shall be delivered to Respondent Rauscher Pierce Refsnes, Inc. at the time Claimant Principal Financial Securities, Inc. receives the request to transfer via ACATS or other client authorization to transfer the account. For those accounts that have already transferred, the clients files shall be delivered to Respondent Rauscher Pierce Refsnes, Inc. by 12:00 p.m. (noon), Tuesday, March 14, 1995.

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. The parties have also agreed to receive verbal or written notice of this decision prior to receipt of the fully executed Award. Verbal notice of the decision in this matter was given on Monday, March 13, 1995.

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 **Rauscher Pierce Refsnes, Inc.** shall be and hereby is liable for and shall pay to the Claimant Principal Financial Securities, Inc. the sum of **One hundred thousand dollars (\$100,000)** for the use of the client information and the preparation of a mass mailing (solicitation) by Respondents Childres, Travers and Rauscher Pierce Refsnes, Inc. while Respondents Childres and Travers were still working at Principal Financial Securities, Inc. and prior to their joining Respondent Rauscher Pierce Refsnes, Inc.
2. Respondent **Glenn Dean Childres** shall be and hereby is liable for and shall pay to the Claimant Principal Financial Securities, Inc. the sum of **Ten thousand dollars (\$10,000)** for the use of the client information and the preparation of a mass mailing (solicitation) by Respondents Childres, Travers and Rauscher Pierce Refsnes, Inc. while Respondents Childres and Travers were still working at Principal Financial Securities, Inc. and prior to their joining Respondent Rauscher Pierce Refsnes, Inc.
3. Respondent **Jerry Lee Travers** shall be and hereby is liable for and shall pay to the Claimant Principal Financial Securities, Inc. the sum of **Ten thousand dollars (\$10,000)** for the use of the client information and the preparation of a mass mailing (solicitation) by Respondents Childres, Travers and Rauscher Pierce Refsnes, Inc. while Respondents Childres and Travers were still working at Principal Financial Securities, Inc. and prior to their joining Respondent Rauscher Pierce Refsnes, Inc.
4. Each party shall bear its own costs, expenses and fees, including attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each prehearing conference, if any. There were sessions $12 \times \$1,000 = \$12,000$ in forum fees. Pursuant to §44(b) 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 §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 shall **retain** the non-refundable surcharge in the amount of \$2,500 pursuant to §44(h) and shall **retain** as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with the NASD by the Claimant Principal Financial Securities, Inc. Claimant Principal Financial Securities, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$3,800 as forum fees.

Pursuant to §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 shall **retain** the non-refundable surcharge in the amount of \$2,500 pursuant to §44(h) and shall **retain** as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with the NASD by Respondent Rauscher Pierce Refsnes, Inc. The \$500 previously deposited with the NASD by Respondent Rauscher Pierce Refsnes, Inc. shall be applied to the outstanding forum fees. Respondent Rauscher Pierce Refsnes, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$5,700 as the balance due for forum fees. **Fees are payable to the National Association of Securities Dealers, Inc.**

Dated:

/s/ James B. Eichberg

March 17, 1995

James B. Eichberg

Public Arbitrator, Presiding Chair

/s/ Winston C. Fournier

March 17, 1995

Winston C. Fournier

Public Arbitrator

/s/ Frank B. Merchant

March 17, 1995

Frank B. Merchant

Industry Arbitrator