

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Investacorp, Inc.,

Claimant,

v.

No. 95-01832

Quintas Earl Webb, and Barbara G. Webb,
Robert Loeser, John Blanchette-Loeser LP,
and Correspondent Services Corp.,

Respondents.

REPRESENTATION OF PARTIES

Claimant Investacorp, Inc. was represented by David M. Rappaport, Esq. of Investacorp, Inc. located in Miami, FL.

Respondents Quintas Earl Webb and Barbara G. Webb were represented by James R. Snell, Esq. of James R. Snell Attorney at Law located in Houston, TX.

CASE INFORMATION

Claimant Investacorp, Inc.'s Statement of Claim was filed on or about April 17, 1995.

Claimant's Reply to the Respondents, Earl Webb and Barbara Webb's Objection to Arbitration and Answer on or about June 19, 1995.

Claimant's Submission Agreement was signed on April 10, 1995 by Randy K. Nestel, Senior Vice President.

Respondents Quintas Earl Webb and Barbara G. Webb's Statement of Answer was filed on or about June 7, 1995.

Respondents Quintas Earl Webb and Barbara G. Webb's Supplemental Objection to Arbitration was filed on July 17, 1995.

Respondents Quintas Earl Webb and Barbara G. Webb's Counter-Claim was filed on or about September 3, 1996.

HEARING INFORMATION

There were no pre-hearing conferences held.

The hearing was held on: September 11, 1996, for two (2) sessions; and
September 12, 1996, for two (2) sessions.

The hearing was held in Houston, TX.

CASE SUMMARY

Claimant Investacorp, Inc. ("Claimant") alleged that Respondents Quintas Earl Webb and Barbara G. Webb ("Respondents"), who were both registered representatives with Claimant, were liable for indemnification of the outstanding obligation of certain of Respondents' clients. Claimant asserted that Respondents Robert Loeser, John Blanchette, and Blanchette-Loeser LP, who maintained a securities account with Claimant through Respondent Quintas Earl Webb, breached their contract with Claimant by failing to remit the debit balance on their account which, at that time of filing the Statement of Claim, was \$76,438.84. Claimant further asserted that, pursuant to the Principal Agreement Respondents entered into with Claimant, Respondents were contractually obligated to indemnify Claimant for their clients default on the outstanding obligation. Claimant contended: that in response to its informing Respondents of their obligation to indemnify Claimant on this matter, Respondents notified it on December 15, 1994, that they were resigning, which, according to Claimant, was done as an attempt to evade their financial obligation; that Respondents were kept fully informed of this matter in writing; that pursuant to a letter agreement dated November 22, 1993, Respondents agreed to, jointly and severally, indemnify Claimant from any costs, expenses or liabilities incurred by Claimant with respect to Respondents customers; that Respondents have subsequently refused to secure or obtain the unpaid and past due debit balance of their clients; and that Respondents have been notified in writing of their clients' default.

Respondents Quintas Earl Webb and Barbara G. Webb denied the allegations set forth in the Statement of Claim. Respondents stated that: Claimant was seeking indemnification for margin debt and the Principal Agreements entered into with Claimant made no mention of margin debt; there were no writings through which Respondents assumed or guaranteed any margin extended; margin was extended through an agreement entered into solely between Respondents Blanchette-Loeser LP and Correspondent Services Corp.; Respondents made no credit decisions, and had no control over margin requirements or calls; and margin calls were made, and the debt at issue arose, after Respondents gave notice of their termination of the Principal Agreements. Respondents objected to arbitration asserting that the alleged obligation sued upon was separate and apart from the concerns of the NASD, that the claim arose under state law, and that the claim should have been litigated in court. Respondents specifically denied that they agreed to indemnify Claimant for any margin debt. Nonetheless, according to Respondents: the claim against them was premature because the liability of respondent Blanchette-Loeser LP had not been established; the indemnity

sued upon was unenforceable under both Texas and Florida law; and there was no jurisdiction to adjudicate the indemnity claim through arbitration.

Claimant denied all objections and answers raised by Respondents. According to Claimant, Respondents were subject to arbitration pursuant to: the Principal Agreements entered into by Respondents with Claimant; Sections 10101 and 10201 of the Code of Arbitration Procedure; the Form U-4 which Respondents signed; and the subject matter of the dispute. In addition, Claimant clarified its allegation as to Respondents obligation to indemnify by asserting that the Indemnification Clause of the Respondents' Principal Agreements provided for indemnity at all times, including any time subsequent to the termination of the agreement, of any debit arising out of Respondents' clients.

Respondents denied Claimant's contentions regarding compelling arbitration. Respondents asserted that the rules of a securities exchange, standing alone, did not compel arbitration, unless there was an agreement between the parties, and that Form U-4 registration did not create a contractual obligation to arbitrate under Texas law. Respondents also asserted that the Principal Agreements did not contain an obligation to arbitrate.

RELIEF REQUESTED

Claimant Investacorp, Inc. requested: an award in the amount of \$76,438.84 for compensatory damages, plus accruing interest; an award for attorneys' fees; and an award for costs.

Respondents Quintas Earl Webb and Barbara G. Webb requested that the Statement of Claim be denied.

OTHER ISSUES CONSIDERED & DECIDED

Pursuant to written notification dated August 16, 1996 and August 22, 1996, Claimant Investacorp, Inc. and Respondents Robert Loeser, John Blanchette, Blanchette-Loeser LP, and Correspondent Services Corp. withdrew all their claims against each other with prejudice. Therefore, Respondents Robert Loeser, John Blanchette-Loeser LP, and Correspondent Services Corp were removed as active parties in this case. The claims between Claimant Investacorp, Inc. and Respondents Quintas Earl Webb and Barbara Webb remained to be determined by the panel.

On or about September 5, 1996, Respondents Quintas Earl Webb and Barbara Webb requested leave of the panel to file a counter-claim. Claimant Investacorp, Inc. submitted a written objection to the request on or about September 6, 1996. After careful consideration and following oral arguments made by the parties at the hearing on September 11, 1996, the arbitrators decided that Respondents Quintas Earl Webb and Barbara Webb's request for leave to file a counter-claim was denied.

Respondents Quintas Earl Webb and Barbara G. Webb did not file with NASD Regulation, Inc. Office of Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Section 10301 of the Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that the Award in this^o 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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

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

1. That Respondents Quintas Earl Webb and Barbara G. Webb are hereby, jointly and severally, liable for and shall pay Claimant Investacorp, Inc. \$52,700 for compensatory damages;
2. That the parties shall bear their own costs including attorneys' fees except for those costs such as forum fees specifically enumerated herein; and
3. That all other claims and requests for relief not specifically granted herein are hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session. There were (4) hearing sessions x \$600 = \$2,400 in forum fees. Pursuant to Section 10205(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 10205(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500 and shall retain as forum fees the hearing session deposit in the amount of \$600 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant Investacorp, Inc.

Claimant Investacorp, Inc. is hereby liable for and shall pay the member surcharge in the amount of \$300 pursuant to Section 10333 of the Code of Arbitration Procedure. Claimant Investacorp, Inc. is hereby liable for and shall pay forum fees in the amount of \$600 in accordance with Section 10205(c) of the Code.

Respondents Quintas Earl Webb and Barbara G. Webb are hereby, jointly and severally, liable for and shall pay forum fees in the amount of \$1,200 pursuant to Section 10205(c) of the Code.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Signed:

Dated:

Sharon J. Hemphill, Esq.

November 15, 1996

Sharon J. Hemphill, Esq.
Public Arbitrator, Presiding Chair

James P. Hoefling

November 14, 1996

James P. Hoefling
Public Arbitrator

Bryan T. Forman

November 13, 1996

Bryan T. Forman
Industry Arbitrator

Date served by the NASD Regulation:

November 25, 1996