

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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Securities Dealers

In the Matter of the Arbitration Between

Name of Claimant

9/96

1996

Charles E. Kautz

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9503419

Name of Respondent

Waddell & Reed, Inc.

REPRESENTATION

For Claimant, Charles E. Kautz ("Kautz"): John R. Kiefner, Jr., Esq. of Riden, Earle & Kiefner, P.A., St. Petersburg, FL.

For Respondent, Waddell & Reed, Inc. ("Waddell"): Anthony Durone, Esq. and W. Perry Brandt, Esq. of Stinson, Mag & Fizzell, P.C., Kansas City, MO.

CASE INFORMATION

Statement of Claim filed: June 17, 1995.

Claimant's Submission Agreement signed on: July 11, 1995.

Statement of Answer filed by Respondent on: August 23, 1995.

HEARING INFORMATION

On July 16, 17, 18 and 19, 1996 in Tampa, Florida, a hearing lasting 8 sessions was conducted.

CASE SUMMARY

Claimant alleged that as a Division Manager, he was assured that under his compensation schedule, he could collect manager's overrides on commissions earned by his representatives by

"giving away" client transactions. Further, Claimant was assured that this procedure was acceptable under the Respondent's system. By virtue of internal documentation, including, but not limited to, new account applications and commission reports, and conversations with Claimant's supervisor knew this was an on-going practice. Claimant made no attempt to hide this practice, which was commonly known in the Sarasota office. Claimant further alleged that he had been discharged without cause; was setup as a "scapegoat to cover Respondent's faulty, management and unsupervised practices as well as improper adherence to NASD Rules. More specifically, Claimant alleged (1) defamation; (2) tortious interference with advantageous business relationships, causing losses in earnings and benefits; (3) violation of implied covenant, of good faith and fair dealing; (4) intentional infliction of emotional distress; and (4) breach of contract.

Respondent denied all of Claimant's alleged claims and alleged that good cause in fact existed, or Claimant's discharge because he was discovered to have engaged in a commission kickback scheme of which he did not advise his superiors. In addition, Respondent alleged that as a Division Manager, Claimant inadequately supervised District Manager Bernard Gomiak who falsified customer orders and misused customer funds. Furthermore, Respondents contended it did not improperly terminate Claimant's employment, nor did it defame him in connection with the U-5 filing.

RELIEF REQUESTED

Claimant requested the following relief: (1) punitive damages in the amount of not less than **\$6,000,000.00** to be determined by the Arbitrators; (2) injunctive relief directing the filing of an amended Form U-5 and deletion of the original Form U-5; (3) a damage award in the total amount of **\$8,000,000.00**, prejudgment interest at the prevailing statutory rate, reasonable attorney's fees, costs of this action, and such other and further relief as the Panel deems necessary and proper.

Respondent requested that Claimant's claims be dismissed and asserted the following defenses: (1) res judicata and collateral estoppel; (2) privilege; (3) unclean hands; and (4) mitigation of damages.

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:

Page 3
NASD #95-03419

1. Respondent is found not liable and, therefore, all claims against it are hereby dismissed.
2. All other claims are hereby denied.

OTHER COSTS

Other than provided for below, the parties shall each bear all other costs and expenses incurred by them in this proceeding.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of **\$12,000.00** (8 sessions x **\$1,500.00**).

1. Claimant is hereby assessed **\$6,000.00** for which the NASD **shall** retain the **\$1,500.00** previously deposited in partial satisfaction thereof leaving a balance due to the NASD of **\$4,500.00** payable to the National Association of Securities Dealers, Inc.
2. Respondent is hereby assessed **\$6,000.00** payable to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the non-refundable filing fee of \$500.00 paid by the Claimant.
4. The NASD **shall** retain the non-refundable member surcharge of \$500.00 paid by the Respondent.

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

Concurring Arbitrators' Signatures
Name

/s/

James A. Cormack

Public/Chairperson

/s/

Norman Morris

Industry/Panelist

/s/

William F. Davenport, Esq.

Public/Panelist

September 9, 1996
Date of Decision: _____