

NASD AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

First Allied Securities, Inc.

95-03500

Name of Respondents

H.J. Meyers & Co., Inc.
Marion Bass Securities Corporation
Pinnacle Securities
Craig R. Lodge

Name of Third Party Respondent

Josephthal Lyon & Ross

REPRESENTATION

First Allied Securities, Inc. ("Claimant" or "First Allied") and Josephthal Lyon & Ross ("JLR") were represented in this proceeding by Elaine M. Laflamme of the New York, New York law firm of Camby, Karlinsky & Stein LLP.

Marion Bass Securities Corporation ("Marion Bass") was represented in this proceeding by Theodore J. Sawicki and John E. Burgess of the Atlanta, Georgia law firm of Alston & Bird LLP.

Respondents Pinnacle Securities, a division of H. J. Meyers & Co., Inc. and H. J. Meyers & Co. Inc. (hereinafter collectively "H. J. Meyers") were represented in this proceeding by Stephen C. Voris of the Chicago, Illinois law firm of Burke, Warren, MacKay & Serritella, P.C.

Craig R. Lodge ("Lodge") did not appear at the arbitration.

CASE INFORMATION

Statement of Claim filed: July 19, 1995

Claimant's response to the counterclaims of Marion Bass and H.J. Meyers filed on:

November 22, 1995

Claimant's Submission Agreement executed by Peter Sheib, Chief Executive Officer, First Allied Securities, Inc. signed on: July 18, 1995

Marion Bass' Statement of Answer, Counterclaim and Cross-Claim filed: October 2, 1995

Marion Bass' Submission Agreement executed by Gerald P. Chandik, Chief Compliance Officer, Marion Bass Securities Corporation on: August 17, 1995

Marion Bass' Amended Answer adding Third-Party Claim against Josephal Lyon & Ross filed: January 9, 1997

H.J. Meyer's Statement of Answer, Counterclaim and Cross-Claim filed: November 13, 1995.

H.J. Meyer's Submission Agreement executed by Michael F. Brown, General Counsel, H.J. Meyers & Co., Inc. on: October 30, 1995

JLR's Answer to Marion Bass' Third-Party Claim was filed: May 1, 1997

Lodge did not file any responsive pleadings nor did he file a uniform submission agreement.

HEARING INFORMATION

Pre-Hearing Conference: March 24, 1997 - one session
December 2, 1997 - one session

Hearing Dates/Sessions: October 27, 1997 - two sessions
October 28, 1997 - two sessions
January 13, 1998 - two sessions
January 14, 1998 - two sessions
January 15, 1998 - two sessions
January 16, 1998 - two sessions
January 27, 1998 - two sessions

Hearing Location: NASD Regulation District Office, Atlanta, GA; The Ritz Carlton Buckhead; and, The Ritz Carlton Atlanta

CASE SUMMARY

First Allied commenced this arbitration proceeding to recover alleged losses in the amount of \$325,000 arising from the liquidation in January 1995 of alleged overpriced positions in 19 collateralized mortgage obligation ("CMO") securities. First Allied alleged that the CMO positions became priced "away from the market" as the result of a series of transactions in those positions during the period from July 1994 through December 1994 between Respondents Lodge, Marion Bass, H. J. Meyers, and other broker-dealers. First Allied alleges that First Allied came to hold the CMO positions as the result of the unauthorized actions of Lodge.

First Allied alleged that Marion Bass caused an additional \$142,000 of losses due to Marion Bass's improper opening of an institutional customer account in the name of Argent Capital Corp. ("Argent") and the purchase of certain CMO positions for that account pursuant to the instructions of Lodge. First Allied asserted claims against Marion Bass for violations of § 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder ("10b-5 claim"), the Racketeer Influenced and Corrupt Organizations Act ("RICO") and common law fraud, and with respect to the alleged \$142,000 loss only, First Allied asserted claims against Marion Bass based on negligence and alleged breach of applicable SRO rules and regulations. First Allied asserted a 10b-5 claim, a RICO claim and a common law fraud against H. J. Meyers, as well as a breach of contract claim for alleged CMO trades on December 28, 1994, with respect to First Allied's alleged \$325,000 loss. Against Lodge, First Allied asserted 10b-5, RICO and common law fraud claims for the entire loss of \$467,000 that First Allied alleged it suffered.

Marion Bass and H. J. Meyers categorically denied that they committed any wrongdoing alleged in First Allied's Statement of Claim and further denied that they are liable to First Allied in any amount. Specifically, Marion Bass and H. J. Meyers denied that they committed fraud or breached any duty to First Allied in effecting transactions in the CMO positions at issue in this case. Marion Bass denied that it did anything improper in opening the Argent account or taking orders for those accounts pursuant to Lodge's instructions. Also, H. J. Meyers denied that it ever agreed to purchase any CMO positions from First Allied on December 28, 1994. Marion Bass and H. J. Meyers denied that they are liable to First Allied in any amount because First Allied was aware of the trading activity of Lodge during the period July 1994 through December 1994, and JLR, First Allied's affiliate, participated in many CMO transactions with Lodge during the relevant period. Marion Bass and H. J. Meyer maintained that First Allied hired Lodge as a trader on December 20, 1994, and therefore Lodge had full authority to act on behalf of First Allied in effecting the CMO transactions for which First Allied now attempts to deny responsibility. Marion Bass and H. J. Meyer maintained that Lodge's activities as a

First Allied trader were approved by Lodge's supervisors at First Allied, which approval absolutely bars First Allied's claims. Marion Bass maintained that it is not liable to First Allied with respect to any portion of First Allied's alleged loss of \$142,000 because First Allied has not in fact incurred such losses.

Marion Bass and H. J. Meyers assert by way of counterclaim their right to recover from First Allied their respective litigation expenses, including attorneys' fees, due to First Allied's commencement and prosecution of this arbitration proceeding in bad faith. In addition, Marion Bass and H. J. Meyers have asserted third-party claims for indemnification or contribution against Josephthal Lyon & Ross Incorporated ("JLR") and cross-claims against Lodge.

Lodge has not made any response to First Allied's Statement of Claim or the cross-claims of Marion Bass and H. J. Meyers, nor has he otherwise made any appearance in this arbitration proceeding.

RELIEF REQUESTED

Claimant requested compensatory in the amount of at least \$467,000.00, punitive damages, statutory treble damages, and attorneys' fees. Claimant requested that the counterclaims asserted by Respondents Marion Bass and H.J. Meyers be dismissed in their entirety.

Marion Bass requested that Claimant's claim be denied in its entirety and for its counterclaim against First Allied, Marion Bass requested an award of its litigation expenses, including attorneys' fees, incurred in this arbitration proceeding as the prevailing party, and further, due to First Allied's commencement and prosecution of this proceeding in bad faith. In addition, Marion Bass requested indemnification or contribution from Lodge and JLR with respect to its litigation expenses, including attorneys' fees, as well as with respect to any award that might be entered against Marion Bass in this proceeding.

H. J. Meyers requested that Claimant's claim be denied in its entirety and for its counterclaim against First Allied, H. J. Meyers requested an award of its litigation expenses, including attorneys' fees, incurred in this arbitration proceeding as the prevailing party, and further, due to First Allied's commencement and prosecution of this proceeding in bad faith. H. J. Meyers also requested indemnification or contribution from Lodge and JLR with respect to its litigation expenses, including attorneys' fees, as well as with respect to any award that might be entered against H.J. Meyers in this proceeding.

JLR requested that the third-party claims of Marion Bass and H.J. Meyers be dismissed in their entirety.

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 NASD Regulation, Inc. ("NASD Regulation").

At the commencement of the hearing Respondents Marion Bass and H. J. Meyer withdrew their cross claims filed against one another. During the hearing H.J. Meyer sought permission from the panel to amend its answer to add a third-party claim against JLR for indemnification and contribution. Pursuant to its authority under NASD Rule 10328(b) the panel granted H. J. Meyer's request to file this amended pleading.

Upon review of the file and the representations made by Claimant, the undersigned arbitrators have determined that Craig R. Lodge has been properly served with the Statement of Claim pursuant to Rule 10201 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). Pursuant to NASD Rules 10201 and 10318 of the Code, the panel exercised its jurisdiction over Lodge, notwithstanding his failure to appear or file a uniform submission agreement. Lodge is bound by the rulings and determinations issued by this panel. Attached to this award are letters reflecting NASD Regulation's attempts to serve Lodge.

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. That Claimant First Allied Securities, Inc. is liable to Respondent Marion Bass on its counterclaim and shall pay to Marion Bass the sum of \$70,000; post hearing interest will begin to run thirty days after receipt of the Award. Post hearing interest will run at eight percent (8%) simple interest per annum.
2. That Claimant First Allied Securities, Inc. is liable to Respondent H. J. Meyer on its counterclaim and shall pay to H. J. Meyer the sum of \$70,000; post hearing interest will begin to run thirty days after receipt of the Award. Post hearing interest will run at eight percent (8%) simple interest per annum.

3. That Respondent Lodge is liable to Claimant First Allied Securities, Inc. and shall pay to First Allied Securities, Inc. the sum of \$70,000. Post hearing interest at the rate of eight percent (8%) simple interest per annum will begin to run 30 days after receipt of the Award. The Panel finds that this award against Lodge is based on the theory of fraud and therefore is not dischargeable in bankruptcy.
4. When Claimant First Allied Securities, Inc. pays the amounts referenced in 1. and 2. above, then Respondent Craig R. Lodge is liable to Claimant for the additional sum of \$140,000 and shall pay to Claimant the sum of \$140,000. Post hearing interest at the rate of eight percent (8%) simple interest per annum will begin to run 30 days after Claimant provides proof to Lodge that it has paid Respondents Marion Bass and H.J. Meyer in full. The Panel finds that this award against Lodge is based on the theory of fraud and therefore is not dischargeable in bankruptcy.
5. That Claimant's claim for treble damages and punitive damages are denied in their entirety.
6. That Respondents Marion Bass and H.J. Meyers third-party claims against JLR are dismissed.
7. Any and all other claims not specifically addressed herein are denied in their entirety.

OTHER COSTS

Claimant paid for a postponement fee in the amount of \$1,000. The postponement was denied. Claimant is entitled to apply this postponement fee to its other costs and forum fees incurred in this matter. Claimant is assessed the costs for the telephone conferences charges associated to the January 1998 hearings in the amount of \$334.82 leaving Claimant a balance of \$665.18 to offset its forum fees. Respondent Marion Bass postponement fee of \$1000 for postponement of hearing scheduled for March 24 and 25, 1997 is retained.

FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the following forum fees are assessed.

(2 pre hearing conferences sessions with the chairperson x \$300) + (14 hearing sessions x \$1,000) = \$14,600

First Allied paid a surcharge fee of \$500.

Marion Bass paid a surcharge fee of \$500.

H. J. Meyer paid a surcharge fee of \$500.

JLR surcharge fee of \$500 is due.

Forum fees Assessed Against: 50% against First Allied Securities, Inc.
25% against Marion Bass
25% against H. J. Meyers

First Allied is assessed forum fees in the amount of \$7,300. First Allied is entitled to offset this amount with its hearing deposit of \$1,000, with its hearing session overpayment of \$500 and with its balance remaining on its postponement fee of \$665.18 so that the amount due from Claimant as a forum fee assessment is \$5,134.82.

Marion Bass is assessed forum fees in the amount of \$3,650. Marion Bass is entitled to offset this amount with its hearing session deposit of \$1,000 and its over payment of 500 so that the amount due from Marion Bass as a forum fee assessment is \$2,150.

H. J. Meyer is assessed forum fees in the amount of \$3,650. H. J. Meyer is entitled to offset this amount with its hearing session deposit of \$1,000 and its over payment of \$500 so that the amount due from H. J. Meyer as a forum fee assessment is \$2,150.

JLR is assessed its member surcharge fee of \$500.

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

DATE AWARD SIGNED

Concurring Arbitrators' Signature

Mike Brown

P. Parks Duncan, Chairperson
Industry Arbitrator

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Walter S. Hay, Panelist
Industry Arbitrator

Paul F. Hood, Panelist
Industry Arbitrator

Date Award Served by NASD Regulation, Inc.:

February 25, 1998

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Walter S. Hay
Walter S. Hay, Panelist
Industry Arbitrator

Paul F. Hood, Panelist
Industry Arbitrator

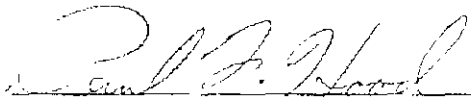
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Walter S. Hay, Panelist
Industry Arbitrator

2/11/98


Paul F. Hood, Panelist
Industry Arbitrator

Date Award Served by NASD Regulation, Inc.:

