

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Hill, Thompson, Magid & Co., Inc.

v.

CASE NO.
95-04398

Name of Respondents

U.S. Clearing Corp.
Sharpe Capital Inc.
Judith Ann Payer
William F. Kirincich

REPRESENTATION

For Claimant, Hill Thompson, Magid & Company, Inc. ("Hill"), A. Ross Pearlson, Esq. and Robert Hill Thompson Axelrod, Esq. of Sills, Cummins, Zuckerman, Radin, Tischman, Epstein & Gross located in Newark, New Jersey.

For Respondent, Sharpe Capital, Inc. ("Sharpe"), Jacob Zamansky, Esq. of Singer, Bienenstock, Zamansky, Ogele & Selengut located in New York, New York.

For Respondent, Judith Payer ("Payer"), Jacoby Zamansky, Esq. of Singer, Bienenstock, Zamansky, Ogele & Selengut located in New York, New York.

For Respondent, William Kirincich ("Kirincich"), Jacoby Zamansky, Esq. of Singer, Bienenstock, Zamanasky, Ogele & Selengut located in New York, New York.

CASE INFORMATION

Statement of Claim filed by Hill, Thompson, Magid & Company, Inc. on September 12, 1995.
Claimant's Submission Agreement signed on September 12, 1995.

Statement of Answer and Counterclaim filed by all Respondents on:	September 12, 1995.
Respondent U.S. Clearing Corp.'s Submission Agreement executed on:	September 12, 1995
Respondent William Kirincich's Submission Agreement executed on:	September 12, 1995.
Respondent Judith Payer's Submission Agreement executed on:	September 12, 1995.
Respondent Sharpe Capital, Inc.'s Submission Agreement executed on:	September 12, 1995.

HEARING INFORMATION

Pre-Hearing Conference:	October 3, 1995	-	1 session
	October 5, 1995	-	1 session

Hearing Dates/Sessions:	October 6, 1995	-	1 session
	October 11, 1995	-	2 sessions
	October 12, 1995	-	3 sessions
	October 13, 1995	-	2 sessions
	October 26, 1995	-	2 sessions
	November 27, 1995	-	2 sessions
	November 29, 1995	-	2 sessions
	December 1, 1995	-	2 sessions
	January 2, 1996	-	2 sessions
	January 3, 1996	-	2 sessions

Hearing Location: NASD office located at 33 Whitehall Street, New York, New York, 10004

CASE SUMMARY

Claimant alleged that Respondents Payer and Kirincich unlawfully took Claimant's proprietary information with them when they left its employ to work for Respondent Sharpe. Claimant further alleged that as traders, Respondents Payer and Kirincich had access to Claimant's proprietary information, including account and customer lists. Claimants also maintained that Respondents collectively, unlawfully solicited Claimant's employees, and misappropriated Claimant's customers and specific accounts. Claimant maintained that on or about May 25, 1995, Respondents Payer and Kirincich withdrew from Claimant's employ and declared that they were leaving to work for Respondent Sharpe. Claimant alleged Respondents Payer and Kirincich solicited Claimant's employees to join them at Respondent Sharpe's business, using Claimant's client and account lists to select stocks for the dual purpose of disabling Claimant, and displacing Claimant as market maker in these stocks. Claimants additionally stated that Respondents Payer and Kirincich continue to raid Claimant's employees.

In May 1992, Claimant stated it entered into an agreement with Respondent U.S. Clearing Corp. whereby U.S. Clearing Corp. would clear a portion of Claimant's trades. Consequently, Respondent U.S. Clearing Corp. had access to Claimant's alleged proprietary information relating to its customers and accounts. Claimant maintained that Respondent U.S. Clearing Corp. violated part of the agreement which provided that all customer names, addresses and lists shall be treated as proprietary by Claimant and that neither party would solicit any of the other's employees for a period of a year after termination of the agreement, without written consent of the other party. Claimant alleged that Respondent U.S. Clearing Corp. violated the agreement in an effort to punish it for not giving it enough business via clearing Claimant's trades.

Claimant maintained that Respondent U.S. Clearing Corp. financed and controlled Respondent Sharpe's new trading desk in furtherance of its specific agenda to capture Claimant's business for its own benefit. Claimant alleged that Sharpe's desk consists primarily of Claimant's ex-employees, accounts and customers.

Claimant alleged breach of fiduciary duty, unfair competition, theft of trade secrets, tortious interference with contractual and prospective business relations, and aiding and abetting breach of fiduciary duty against all Respondents. Additionally, Claimant alleged breach of contract, as well as breach of the covenant of good faith and fair dealing against Respondent U.S. Clearing Corp.

Respondents Payer and Kirincich alleged that Claimant mischaracterized the information in controversy as "proprietary", claiming that the information is widely and publicly available. Respondents Payer and Kirincich further maintained that they took only their trading skills and general knowledge of the industry with them when they ended their association with Claimant, not any documents or files.

Therefore, Respondents alleged, there was no theft or misappropriation of trade secrets, and no breach of fiduciary duty.

Respondents further maintained that Respondents Payer and Kirincich were independent contractors, not employees of Claimant. Respondents also denied soliciting any employees from Claimant's place of business.

In addition, Respondents Payer and Kirincich alleged that Claimant instructed its employees to spread false statements characterizing Respondents Payer and Kirincich as disreputable and incompetent, and that both were "fired".

Respondents affirmatively defended that Claimant failed to state a claim for which relief could be granted, and that Claimant is estopped by laches because it waited two months to commence its action.

Respondents counterclaimed for tortious interference with performance of contract, tortious interference with contractual and pre-contractual relations, defamation, unfair competition, abuse of process, and intentional infliction of emotional distress. Respondents Payer and Kirincich also alleged that Claimant owed \$100,000 in commissions.

RELIEF REQUESTED

Claimant requested:

1. That Respondents be required to account for any funds obtained by them as a result of their alleged unlawful activities, including any profits and commissions made on trades from securities in Claimant's Number Two and Number Five Accounts on with Claimant's customers; in Claimant's Number Two and Number Five Accounts;
2. That Respondents Payer and Kirincich be required to disgorge all commissions earned on trades from securities in Claimant's Number Two and Number Five accounts during the period where they acted in alleged breach of fiduciary duties to Claimant;
3. That Respondents Payer and Kirincich be required to disgorge all commissions earned on trades from securities in Claimant's Number Two and Number Five Accounts for the two months immediately following Respondents' termination of their employment with Claimant; and
4. Such further relief deemed just and proper.

Respondents requested:

1. \$5 Million in compensatory damages, plus damages to Sharpe;
2. \$5 Million in compensatory damages, plus damages to U.S. Cleaning;
3. \$5 Million in compensatory damages, plus damages to Payer and Kirincich each;
4. Attorney's fees and other associated costs;
5. \$100,000 plus interest owed to Payer and Kirincich from their trading account at Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies and agreed to receive confirmed copies of the Award while the originals remain on file with the NASD.

AWARD

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

1. The panel directs Hill, Thompson, Magid & Co., Inc. to pay the total of \$39,176.00 to Respondents William F. Kirincich and Judith Ann Payer. All claims by and against U.S. Clearing Corp. and Sharpe Capital, Inc. are dismissed.
2. The panel finds that Anthony Broy submitted an amendment to the U-5 of William F. Kirincich, which amendment contained false and improper information which was dated August 29, 1995. We further find that such amendment contains false and improper information which was deliberately designed to harm the reputation of William F. Kirincich. Therefore, we direct that the amendment dated August 29, 1995 be withdrawn and the original U-5 dated May 30, 1995 be reinstated as the correct document covering the voluntary resignation of William F. Kirincich from Hill, Thompson, Magid & Co., Inc. on May 24, 1995, with any and all other official documents and records to be so conformed. We are deeply concerned by the occurrence of such conduct on behalf of a principal of a member securities firm.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed against Hill, Thompson, Magid & Co., Inc.

Nonrefundable filing fee:	\$ 500.00
Nonrefundable Crossclaim fee:	\$ 500.00
Hearing Session Deposit (\$600.00 x 19 sessions)	\$11,400.00
Non refundable Expedited Fee Member Surcharge	\$ 5,000.00
Pre-Hearing Conference (\$300 x 3 sessions)	\$ 900.00
Section 45 Nonrefundable Member Surcharge	\$ 500.00
Section 45 Nonrefundable Member Surcharge	\$ 350.00

TOTAL FEES

\$19,150.00

1. Claimant is responsible for all forum fees except for the crossclaim fee and Respondent's Section 45 Member Surcharge. Claimant paid \$3,600 and owes \$4,350.00 payable to Respondents and \$11,200.00 payable to the NASD.
2. Respondent paid \$5,350.00 but is liable only for \$1,000.00.

ARBITRATORS SIGNATURES

Robert Seaman

Robert Seaman, Esq.
Chairperson

Industry

Alvin Gallant

Alvin Gallant

Industry

Jerome H. Levy

Jerome H. Levy

Industry

DATE OF DECISION: March 29, 1996

AFFIRMATION

I, Robert Seaman, hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

Robert Seaman

AFFIRMATION

I, Alvin Gallant, do, hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

Alvin Gallant

AFFIRMATION

I, Jerome H. Levy, do, hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

Jerome H. Levy