

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Russell H. Ruhl

95-04559

Name of Respondents

Trimark Securities, Inc.;
Trimark Securities, L.P.;
Roundtable Partners, Inc.;
Knight Securities, L.P.;
Robert Lazarowitz; and
Steven Steinman

REPRESENTATION

For Claimant: Russell H. Ruhl ("Ruhl") was represented by Peter B. Shaeffer, Esq. of Chicago, Illinois.

For Respondents: Trimark Securities, Inc. ("Trimark Inc."); Trimark Securities, L.P. ("Trimark L.P."); Roundtable Partners, Inc. ("Roundtable"); Knight Securities, L.P. ("Knight"); Robert Lazarowitz ("Lazarowitz"); and Steven Steinman ("Steinman") were represented by Thomas J. Hanrahan, Esq. of Glen Rock, New Jersey.

CASE INFORMATION

Statement of Claim filed: September 26, 1995

Claimant's Submission Agreement signed on: September 22, 1995

Statement of Answer and Motion to Change Venue filed by Respondents Trimark Inc., Trimark L.P., Knight, Lazarowitz and Steinman on: November 15, 1995.

Respondent Trimark Inc.'s Submission Agreement signed on: November 15, 1995 by Steve Steinman, President, Trimark Securities, Inc.

Respondent Trimark L.P.'s Submission Agreement signed on: November 15, 1995 by Steve Steinman, President, Trimark Securities L.P.

Respondent Knight's Submission Agreement signed on: November 15, 1995 by Robert Lazarowitz, Chief Financial Officer, Knight Securities, L.P.

Respondent Lazarowitz's Submission Agreement signed on: November 15, 1995.

Respondent Steinman's Submission Agreement signed on: November 15, 1995.
Motion to Dismiss Respondents Roundtable, Lazarowitz and Steinman filed: March 28, 1996.

Claimant's Response to the Motions to Dismiss and Motion to Change Venue filed: July 12, 1996.

HEARING INFORMATION

Pre-Hearing Conference: July 9, 1996 for One (1) session before One (1) arbitrator.

Hearing Dates/Sessions: October 21, 1996 for Two (2) sessions; and
October 22, 1996 for One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant alleged that Respondents had failed to pay him compensation pursuant to a contract Ruhl entered into with Trimark Inc. on September 29, 1992. In Spring of 1995, Trimark Inc. sold its business, including the order flow of clients introduced by Ruhl and upon which his compensation was based, and terminated its contract with Ruhl. However, the former owners of Trimark Inc. are actively involved in the management of Roundtable, Knight, and Trimark L.P. and continue to profit from the order flow originated by Ruhl, but refuse to honor the ongoing commitment to Ruhl. Based upon the allegations, Ruhl asserted claims for breach of contract; specific performance and accounting; unjust enrichment; and for attorneys' fees pursuant to the Illinois Attorneys Fees in Wage Actions Act.

Respondents denied the material allegations of the Statement of Claim and asserted the following defenses:

1. There is no jurisdiction over the Respondent Roundtable;
2. The claim fails to state a claim against Respondents Trimark L.P., Knight, Lazarowitz and Steinman;
3. The contract was set aside and replaced by the contract of May 26, 1995; and
4. Claimant is estopped from bringing this claim because prior to termination of the relationship, Ruhl engaged of conduct which was in conflict of interest and because he cannot show damages as he terminated the relationship and continues to solicit for competitors.

RELIEF REQUESTED

Claimant requested entry of an award for the reasonable attorneys' fees and the wages due and owing to

Ruhl pursuant to the contract.

Respondents requested that the claims be dismissed in the entirety.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Roundtable Partners, LLC did not file an executed submission agreement and is not a member of the NASD. Therefore, Respondent Roundtable Partners, LLC is dismissed without prejudice for lack of jurisdiction.

On July 18, 1996, the Panel determined that the Motion to Change Venue was denied. The decisions on the Motions to Dismiss were taken under advisement pending the presentation of evidence. The decision of the panel is incorporated below.

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:

1. Respondent Trimark Securities, L.P. is liable for and shall pay to the Claimant, Russell H. Ruhl, the sum of \$20,940.00 plus interest at the rate of 9% per annum accruing from April 27, 1995 until the award is paid in full;
2. The claims against Respondents Trimark Securities, Inc., Knight Securities, L.P., Robert Lazarowitz and Steven Steinman are dismissed with prejudice and denied in the entirety;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
4. Any relief not specifically awarded is hereby denied.

OTHER COSTS

Pursuant to Section 10333 of the Code of Arbitration Procedure, Respondent Trimark Securities, L.P. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$350.00 as the member surcharge. The Office of Dispute Resolution shall retain the \$350.00 member surcharge paid by Respondent Knight Securities, L.P.

FORUM FEES

Pursuant to Section 10205(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:
One (1) pre-hearing session x \$300.00 = \$300.00; Three (3) hearing sessions x \$750.00 per session = \$2,250.00; Total forum fees = \$2,550.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$500.00 claim filing fee and refund the \$750.00 hearing session deposit previously deposited by the Claimant, Russell H. Ruhl. Respondent Trimark Securities, L.P. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$2,550.00 as forum fees.

Concurring Arbitrators' Signatures
Name

Date

/s/ Brian E. Slotky
Brian E. Slotky
Industry Arbitrator
Chairperson

December 20, 1996

/s/ William J. Bayer
William J. Bayer
Industry Arbitrator

December 19, 1996

/s/ Michael T. Gedzun
Michael T. Gedzun
Industry Arbitrator

December 19, 1996

For Dispute Resolution Use Only
Date of Decision: December 20, 1996