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NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Lawrence D. Bain,
Claimant

v. No. 95-04565

Dean Witter Reynolds, Inc.,
George Fraser, and
Lawrence Gutsch,
Respondents.

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REPRESENTATION OF PARTIES

Lawrence D. Bain ("Claimant") was represented by Jesse B. Simpson, Esq., of Lewis & Roca, Phoenix, Arizona.

Dean Witter Reynolds, Inc. ("DWR"), George Fraser ("Fraser") and Lawrence Gutsch ("Gutsch") (collectively referred to as "Respondents") were represented by Joseph E. Mais, esq., and Victoria S. Lewis, Esq., of Brown & Bain, Phoenix, Arizona.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about September 25, 1995. Claimant's Submission Agreement was signed on September 5, 1995.

Respondents' Statement of Answer was filed on or about November 27, 1995. Respondents' Submission Agreements were signed on October 31, 1995, November 3, 1995, and November 3, 1995 respectively.

HEARING INFORMATION

The hearing was held on March 6, and 7, 1996 in Scottsdale, Arizona for a total of three (3) sessions.

CASE SUMMARY

Claimant stated that this action arose out of Respondents' alleged attempts to engage in unfair competition against Claimant by unlawfully misappropriating Claimant's unique and novel

marketing concept and using it unfairly in competition with the Claimant, and further by making written false misrepresentations about Claimant to members of the industry in violation of federal law. Claimant further alleged that: While employed at DWR, Claimant created an entirely new and strategic approach for marketing financial services; in full accordance with DWR's employment policies, the Claimant fully disclosed his concept to DWR, in strict confidence, for its review; after its review, DWR expressly declined to adopt Claimant's concept for its own use and also refused to sponsor Claimant's execution of the concept; Claimant then undertook a series of costly and time-consuming activities to develop and implement his marketing concept; Claimant arranged and hosted a series of meetings; Claimant coined the service marks "Arizona Stockbrokers Club" and "Cleveland Stockbrokers Club" ("Stockbrokers Club") as source identifiers for his meetings in the Arizona and Ohio areas; after Claimant left employment with DWR, Claimant learned that Fraser sent a notice of a meeting of the "Arizona Stockbrokers Club", the name coined by Claimant, to registered representatives in the phoenix and Scottsdale areas, and Fraser even used the stationary containing the Arizona Stockbrokers Club logo which was designed at Claimant's expense; DWR breached its fiduciary and confidential relationship; DWR is obligated under an implied contract to refrain from any use of Claimant's proprietary concept; and DWR violated §43(a) of the Federal Trade Mark Act by making false representations to attendees of Claimant's Arizona Stockbrokers' Club in a September 19, 1995 letter where Fraser and Gutsch falsely implied that they were co-hosts on an equal basis with the Claimant, that they co-created the concept with the claimant; they had equal rights in conducting and arranging meetings embodying Claimant's concept, and stating that Claimant had acted unprofessionally in his rightful exercise of his trademark rights in the Arizona Stockbrokers' club mark.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that: The Stockbrokers' Club concept was generally known and widely practiced in the securities industry before the Claimant allegedly created it; Claimant freely disclosed his concept to Gutsch and Fraser and later to the world at large; representatives of the securities industry already had formed Stockbrokers' clubs and other fora through which local publically-traded companies could make presentations to area stockbrokers; nothing in the September 19 letter suggested that Respondents had claimed an ownership or co-ownership interest in the marketing concept, nor did it disparage Claimant in any way. Respondents also asserted the following affirmative defenses: Claimant's claims are barred, in whole or in part, by the doctrines of waiver, estoppel, laches, license and unfair use; Claimant's claims are barred by lack of standing, lack of consideration, by his unclean hands; and Respondents at all times acted reasonably in their dealings with Claimant and have committed no act or omission which would justify a finding or an award of damages against them.

RELIEF REQUESTED

In his Statement of Claim, Claimant requested an award of the following: Injunctive relief prohibiting Respondents from using Claimant's Arizona Stockbrokers Club and Cleveland

Stockbrokers Club service marks and from using claimant's marketing concept under any other name for their own use, as well as ending the falsehoods by DWR; damages to compensate him for the possible loss of sponsorship; and attorneys' fees and expenses incurred in defending his proprietary concept.

In their answer Respondents requested that the claims asserted against them be denied in their entirety and that DWR be awarded reasonable forum fees and attorneys' fees..

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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:

Claimant's claims are, and each of them, denied with prejudice.

All other claims/requests for relief not specifically set forth herein are, and each of them, denied with prejudice.

Each party shall bear its own costs and expenses, including attorneys' fees, associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each prehearing conference, if any. There were three (3) sessions x \$600 = \$1,800 in forum fees. Pursuant to §44(b) of the NASD Code of Arbitration Procedure (the "Code"), 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 §44(c) of the Code, the NASD 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 the NASD by the Claimant.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$350 previously paid by DWR.

Additional forum fees in the amount of \$300 are assessed against the Claimant. The forum fees assessed will be offset by the \$2,650 deposit made by the Claimant. The NASD will refund to the Claimant the remaining amount of \$2,350.

Additional forum fees in the amount of \$900 are assessed against DWR.

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

Dated:

s/s

April 12, 1996

s/s

April 8, 1996

s/s

April 3, 1996