

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

S. John Whitehill

95-04955

Name of Respondents

RRZ Public Markets, Inc.
Timothy S. Davis
Charles Gomulka

REPRESENTATION

Claimant S. John Whitehill ("Claimant") was represented by Daniel M. Berger, Esq. and Amy Acheson, Esq., Berger Law Firm, Pittsburgh, PA.

Respondent RRZ Public Markets, Inc. ("RRZ") was represented by Thomas J. McClain, Esq., Sheehy, Mason & McClain, Pittsburgh, PA.

Respondents Timothy S. Davis ("Davis") and Charles Gomulka ("Gomulka") were represented by Richard R. Nelson, II, Esq., Cohen & Grigsby, Pittsburgh, PA.

CASE INFORMATION

The Statement of Claim was filed October 19, 1995.

Claimant's Uniform Submission Agreement was signed October 12, 1995.

The Joint Statement of Answer of RRZ, Davis and Gomulka was filed December 18, 1995.

RRZ's Uniform Submission Agreement was signed December 18, 1995.

Davis' Uniform Submission Agreement was signed December 18, 1995.

Gomulka's Uniform Submission Agreement was signed December 18, 1995.

HEARING INFORMATION

Hearing dates/sessions: November 13, 1996/two sessions
 November 14, 1996/three sessions
 November 15, 1996/three sessions

Hearing Location: Westin William Penn Hotel
 Pittsburgh, PA

CASE SUMMARY

Claimant alleged, among other things, that he was terminated by Respondents in October 1994 after six years of employment. Claimant alleged that at the time of his termination, Claimant was an institutional broker with a few select retail clients and a net commission income which exceeded \$135,000.00 annually.

Claimant alleged that he was defamed by the Form U-5 which was filed by Respondents after Claimant's departure. Claimant alleged that the Form U-5 stated that Claimant was "Terminated for violation of firm policy" and "Currently is, or at termination was, the individual under internal review for fraud or wrongful taking of property or violating investment related statutes, regulations, rules or industry standards of conduct." Claimant alleged that the Form U-5 goes on to state, concerning Claimant, that "Violation of firm policy based on internal review of his conduct. Employee purchased \$15,000.00 face amount of municipal securities from a firm customer for his own account at a price of 102.5 and sold the securities one day later at 118.59. In the firm's judgment, employee did not adequately disclose his interest in the transaction." Claimant alleged that Claimant did not violate any firm policy, rule or standard of conduct, statute or the like. Claimant alleged that he adequately disclosed his interest in this transaction and that Respondents' filing of the Form U-5 gave rise to an investigation by the NASD. Claimant alleged that following the investigation, the NASD took no action against Claimant due to NASD's determination that the evidence did not support the conclusion that the bond was purchased by Claimant at any value other than that attributed to it by the professional market. Claimant alleged that the Form U-5 was false and defamatory at the time it was filed and continues to be defamatory as it has never been amended or retracted by Respondents. Claimant alleged that the filing of the defamatory Form U-5, and the refusal to amend it, was done with ill-will towards Claimant, maliciously, and with reckless disregard for Claimant's rights. Claimant alleged that he has suffered damage to his reputation, a diminution in actual earnings, and will continue to suffer the same so long as the Form U-5 remains on file as originally composed by Respondents.

Respondents denied all allegations of wrong-doing as to the filing of the Form U-5. Respondents maintained that Claimant purchased bonds from a firm customer for his own account at a price of \$102.50 on October 6, 1994 and then sold those bonds the following day at \$118.00. Respondents maintained that Claimant kept the profit for himself and did not reveal to his superiors that he had personally profited from the trade involving customer owned bonds. Respondents maintained that at the time Claimant purchased the bonds, Claimant knew that the bonds had an unclear call feature which affected their valuation. Respondents further maintained that Claimant knew, prior to his sale of the bonds, that the bonds were non-callable and, therefore, worth much more than the price at which he purchased them from the customer. Respondents also maintained that Claimant confessed to having researched the call feature prior to the sale of the bond.

Respondents maintained that two separate investigations were conducted. Respondents maintained that it was Respondents' intention to comply with the regulatory requirements and protect the firm in the filing of the Form U-5, and to do as little damage to Claimant as possible. Respondents further maintained that the Form U-5 was drafted by counsel and not by Respondents Davis and Gomulka. Respondents maintained that Claimant admitted that Claimant was under internal review for violating investment-related statutes, regulations, rules or industry standards of conduct; that he purchased the bonds and sold them the next day and that he was discharged for a violation of firm policy. Respondents maintained that Claimant did not adequately disclose Claimant's interest in the transactions to his superiors. Respondents maintained that their careful, prudent, and cautious preparation of the form U-5 was wholly appropriate.

under the circumstances. Respondents maintained that they acted in good faith and did not act maliciously or recklessly and the information reported was true.

RELIEF REQUESTED

Claimant requested damages in the amount of \$5,000,000.00 including punitive damages; as well as retraction or amendment of the Form U-5.

Respondents requested that the Statement of Claim be dismissed.

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.

The panel considered Respondent R.R.Z. Public Markets, Inc.'s Request to File Posthearing Brief and Claimant's Response thereto, and denied the Request.

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 the claims against Respondent, Timothy S. Davis, be dismissed.
2. That the claims against Respondent, Charles Gomulka, be dismissed.
3. That the NASD Uniform Termination Notice, Form U-5, of Claimant, Sigmund John Whitehill, be amended as follows:
 - a. Delete the answer to paragraph 7 and substitute "Personality dispute."
 - b. Delete the answer to paragraph 12 and substitute "Personality dispute."
 - c. The box marked "yes" in paragraph 15 should be deleted and the box marked "no" should be indicated with an "X".

These amendments shall be attached to Claimant's original Form U-5.

4. That the August 4, 1995 letter of Richard H. English, Supervisor of Examiners of NASD Regulation, District 9, to Claimant Sigmund John Whitehill, attached as Exhibit "A" to this Award, shall be made a part of Claimant's U-5.
5. That Respondent, R.R.Z. Public Marks, Inc., is liable to and shall pay to the Claimant the sum of \$250,000.00.
6. That the claim for punitive damages is denied.

7. That each party shall bear its own costs and expenses except as specified in the Forum Fees Section below.
8. That any and all relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332(c) (formerly Section 43) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

8 sessions x \$1,500.00 = \$12,000.00

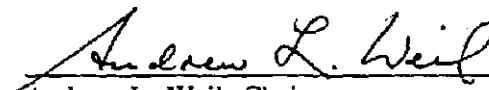
Forum Fees assessed to Respondent R.R.Z. Public Markets, Inc. Therefore, Respondent R.R.Z. Public Markets, Inc. is liable to and shall reimburse Claimant for the \$1,500.00 hearing session deposit previously submitted to the NASD Regulation. Respondent R.R.Z. Public Markets, Inc. has a net assessment due to the NASD Regulation of \$10,500.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

12.12.96



Andrew L. Weil, Chairman
Public Arbitrator

Marvin J. Feldman
Public Arbitrator

Carl Hohnbaum
Industry Arbitrator

Date Decision Served by NASD Regulation:

December 18, 1996

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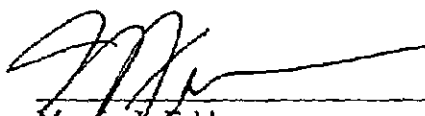
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Andrew L. Weil, Chairman
Public Arbitrator

12/13/96



Marvin J. Feldman
Public Arbitrator

Carl Hohnbaum
Industry Arbitrator

Date Decision Served by NASD Regulation:

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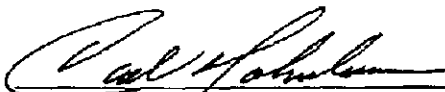
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Carl Hohnbuen
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Date Decision Served by NASD Regulation:

December 18, 1996

August 4, 1995

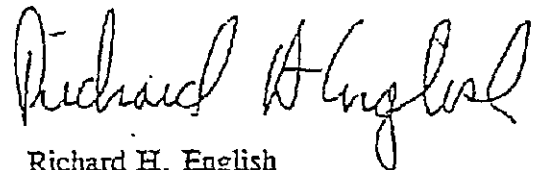
Sigmond J. Whitehill
6217 Howe Street
Pittsburgh, PA 15206

Dear Mr. Whitehill:

We have completed our investigation of your termination from RRZ Public Markets, Inc. and have determined to file without action ("FWA") the examination of the matters reported on the Uniform Termination Notice (Form U-5). The reason for that determination is that our analysis of the available data does not support the conclusion that the bond was purchased by you otherwise than at the value attributed to it by the professional market.

Should you have any questions regarding this matter, please contact Joseph Sloan, Compliance Specialist, at (215) 963-1976.

Sincerely,



Richard H. English
Supervisor of Examiners

CC: RRZ, Public Markets, Inc.
CC: Robert Whitehill, Esq.