

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimant

Eileen Donohue

95-05585

Name of Respondents

Wayne T. Drinkwine
Prime Capital Services, Inc.
William Devine
Michael P. Ryan
Ralph A. Porpora

REPRESENTATION

For Claimant Eileen Donohue ("Donohue"), appeared John E. Lawlor, Esq., a sole practitioner located in Garden City, New York.

Respondent Wayne T. Drinkwine ("Drinkwine") appeared pro se.

For Respondents Prime Capital Services ("PCS"), Michael P. Ryan ("Ryan"), Ralph A. Porpora ("Porpora") and William Devine ("Devine") appeared David L. Becker of Kutak Rock, located in New York, New York.

CASE INFORMATION

Statement of Claim was filed on November 27, 1995.

Claimant's Submission Agreement was signed on October 10, 1995.

Statement of Answer filed by Respondent Drinkwine on February 23, 1996.

Respondent Drinkwine's Submission Agreement was signed on February 16, 1996.

Statement of Answer of Respondent PCS filed on January 31, 1996.

Respondent PCS's Submission Agreement was signed on March 1, 1996.

Statement of Answer of Respondent Devine filed on March 11, 1996.

Respondent Devine's Submission Agreement signed on March 11, 1996.

Statement of Answer of Respondent Ryan filed on January 31, 1996.

Respondent Ryan's Submission Agreement was signed on March 3, 1996.

Statement of Answer of Respondent Porpora filed on January 31, 1996.

Respondent Porpora's Submission Agreement was signed on March 1, 1996.

HEARING INFORMATION

Pre-hearing Conference:	August 21, 1996	-	One Session
Hearing Dates/Sessions:	September 6, 1996	-	One Session
	March 24, 1997	-	Two Sessions
	March 25, 1997	-	Two Sessions
	June 16, 1997	-	One Session

The hearings were held at the offices of NASD Regulation, Inc., located in New York City, New York.

CASE SUMMARY

Claimant alleged that, at all relevant times, respondent Drinkwine was an agent and broker for PCS who had a record of forgery, unauthorized trading, unauthorized possession and use of client statements and criminal charges. Claimant further alleged that respondents Ryan and Porpora were directors and principal shareholders of PCS and Devine was the branch office manager, hence, they all shared a responsibility to supervise Drinkwine. Donohue further alleged that she had maintained accounts with Drinkwine before his employment at PCS, which began in 1991. Donohue alleged that, between 1990 and 1994, she purchased "Unit Trust" securities on Drinkwine's recommendation, and in November 1994, invested in Applebee's restaurant. Claimant alleged that in April 1995, Drinkwine borrowed an additional \$8,000.00. Claimant further alleged that Drinkwine's representations were false and that he never intended to invest Donohue's money in these securities but instead used the money for his own purposes. Donohue asserted that respondents PCS, Devine, Porpora and Ryan failed to exercise due diligence regarding her account and toward supervising Drinkwine.

Respondent Drinkwine maintained that Claimant understood the personal nature of their debtor - creditor relationship, and was fully aware that "Unit Trust" was merely a term for Drinkwine's 10% personal loan program and which was to their mutual benefit. Drinkwine further maintained that he and Devine shared a 45/55% ownership of Mutual Financial Services ("MFS"), a life and health insurance general agent, who's interest was paid to clients with his personal checks, but this arrangement was interrupted when, in late 1994, he challenged Divine regarding an absence of funds in several accounts and expressed his intention to use his share of ownership to service the 10% notes, principal due and/or missing in any offset accounts. Drinkwine also maintained that he inadvertently signed a back-dated document which relinquished his share of MFS, and was subsequently barred from the company's Long Island office. Drinkwine contended that Devine made assurances that he would provide for Drinkwine's loans and offset accounts through his 45% ownership in MFS, but failed to follow through, so Drinkwine instituted a dissolution suite to prove his ownership in MFS and fulfill his obligations. Drinkwine further contended that Devine admitted to an investigator for the St. Paul Insurance Co. that he and Drinkwine were 50/50 partners of MFS in 1990; in 1991 it became a 45/55 split in Devine's favor; Drinkwine's alleged forfeiture of MFS ownership was back dated, and that MFS never operated as a corporation but was a partnership.

Respondent Devine maintained that Claimant's losses were the consequence of her personal transactions with Drinkwine, that their affiliation began prior to his employment at PCS, and that their transactions were private, her payments went directly to Drinkwine and had no connection to PCS or to Devine. Divine further maintained that Claimant's only allegation of wrongdoing by him was a lack of supervision, however, the transactions occurred outside his jurisdiction, and granted him no benefit. Devine also maintained that the periodic PCS statements sent to Donohue reflected her securities

transactions but did not include her Unit Trust investment or her personal loans, which reiterated the absence of connection to PCS.

Respondents PCS, Ryan and Porpora maintained that the loan of \$10,000.00 did not occur while Drinkwine was registered through PCS, and that Claimant's other loans to Drinkwine were for Drinkwine's attempts to open a restaurant as a franchisee of Applebee's. Respondents further maintained that the checks written by Donohue were drawn on her personal account, and payable to Drinkwine personally, and that the loan for \$8,000.00 occurred after Drinkwine was terminated. Therefore, the respondents had no connection to any of these transactions.

Respondents PCS, Ryan and Porpora requested that, if PCS is held liable to claimant for all or part of the alleged loss, that Drinkwine be held liable to PCS either to indemnify it for all loss and damage, or for an amount to be determined by the arbitrators. Respondents also requested that Drinkwine pay for any losses incurred resulting from this arbitration.

RELIEF REQUESTED

Claimant requested \$59,000.00, plus interest, and other compensation to be determined by the panel.

Respondent Drinkwine requested that claimant and all respondents settle their personal business differences amicably or through judicial means, since this dispute does not fall under NASD or SEC jurisdiction.

Respondent Devine requested that Claimant's claim be dismissed in its entirety, and that he be granted all costs, attorney's fees, and other expenses.

Respondents PCS, Ryan and Porpora requested that the claim be dismissed in its entirety, and that Claimant be required to pay all filing fees and forum fees.

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 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:

1. Respondents Devine and Drinkwine be and hereby are jointly and severally liable and shall pay to claimant \$10,000.00 plus interest from March 20, 1991.
2. Respondents Prime Capital Services, Devine and Drinkwine be and hereby are jointly and severally liable and shall pay to claimant \$41,000 plus interest as follows:
 \$15,000.00 plus 9% interest from June 26, 1991
 \$20,000.00 plus 9% interest from May 5, 1994
 \$ 6,000.00 plus 9% interest from November 29, 1994
3. Respondent Drinkwine be and hereby is liable and shall pay to claimant \$8,000.00, plus 9% interest from April 29, 1995.
4. Respondent Drinkwine be and hereby is liable and shall pay to Prime Capital Services \$41,000.00.
5. Respondents Prime Capital Services, Devine and Drinkwine be and hereby are jointly and severally liable and shall pay to claimant \$7,500.00 for attorney's fees.
6. Claimant's claims against Respondent Porpora are hereby dismissed.
7. Respondent Drinkwine's Cross-Claim is hereby dismissed.
8. Respondents Prime Capital Services, Devine and Drinkwine be and hereby is liable and shall pay to Claimant the sum of \$500.00 to reimburse Claimant for the portion of the fees previously paid by Claimant to NASD Regulation.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$150.00 non-refundable filing fee previously deposited by the Claimant and have assessed the following forum fees:

$$6 \text{ sessions} \quad \times \quad \$500.00 \quad = \quad \$3,000.00$$

Respondents Prime Capital Services, Inc., Drinkwine and Devine be and hereby are jointly and severally liable and shall pay the sum of \$3,000.00 representing the total forum fees assessed. Respondents Prime Capital Services, Inc., Drinkwine and Devine be and hereby are jointly and severally liable for and shall pay to NASD Regulation, Inc. the sum of \$2,500.00. Respondents shall pay the sum of \$500.00 to Claimant as provided in the "Award" section above.

ARBITRATOR'S SIGNATURES



Richard W. Vallario, Esq.
Public Arbitrator - Chairman

I, Richard W. Vallario, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Richard W. Vallario, Esq.

Stephen H. Busch
Public Arbitrator

I, Stephen Busch, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Stephen H. Busch

William E.S. Browning, Esq.
Industry Arbitrator

I, William E.S. Browning, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

William E.S. Browning, Esq.


Date of Decision: October 2, 1997

ARBITRATOR'S SIGNATURES

Richard W. Vallario, Esq.
Public Arbitrator - Chairman

I, Richard W. Vallario, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Richard W. Vallario, Esq.



Stephen H. Busch
Public Arbitrator

I, Stephen Busch, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Stephen H. Busch

William E.S. Browning, Esq.
Industry Arbitrator

I, William E.S. Browning, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

William E.S. Browning, Esq.

Date of Decision: October 2, 1997

ARBITRATOR'S SIGNATURES

Richard W. Vallario, Esq.
Public Arbitrator - Chairman

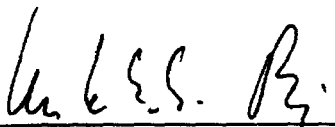
I, Richard W. Vallario, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Richard W. Vallario, Esq.

Stephen H. Busch
Public Arbitrator

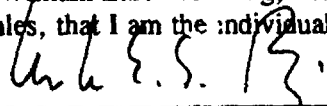
I, Stephen Busch, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Stephen H. Busch



William E.S. Browning, Esq.
Industry Arbitrator

I, William E.S. Browning, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



William E.S. Browning, Esq.

Date of Decision: October 2, 1997