

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Perk & Schmidt International BV

95-05977

Name of Respondents

Roger Watkins  
Watkins Perk International, Inc.  
Watkins International Securities, Inc.

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**REPRESENTATION**

For Claimant Perk & Schmidt International BV ("Claimant"), appeared Michael P. Kaelin, Esq. of the law firm Kelley, Drye & Warren located in Stamford, Connecticut.

For Respondents Roger Watkins ("Watkins"), Watkins Perk International, Inc. ("Watkins Perk"), and Watkins International Securities, Inc. ("WIS"), appeared Norris D. Wolff, Esq. of the law firm Kleinberg, Kaplan, Wolff & Cohen located in New York City, New York.

**CASE INFORMATION**

Statement of Claim filed on: January 23, 1996.

Claimant's Submission Agreement signed on: January 26, 1996.

Claimant's reply to the Counterclaim filed on: May 2, 1996

Joint Statement of Answer filed by Respondents on: March 15, 1996.

Respondents Counterclaim filed on: March 15, 1996.

Respondent Watkins Submission Agreement signed on: March 14, 1996.

Respondents WIS and Watkins Perk did not file Submission Agreements.

**HEARING INFORMATION**

Pre-hearing conference: October 18, 1996 - 1 session

Hearing Dates/Sessions: October 22, 1996 - 2 Sessions  
October 23, 1996 - 2 Sessions  
October 24, 1996 - 2 Sessions

The hearings were held at the City Midday Club located in New York City, New York.

### CASE SUMMARY

Claimant alleged that in April 1995, Respondent Watkins approached it about starting a brokerage firm ("Watkins Perk") to help him service his customers trading in European securities. Claimant further alleged that Watkins needed its help as a business associate because Watkins' sophisticated clientele would insist that the new firm be backed by an established and well known European firm which would be able to clear international transactions. Claimant also alleged that Watkins lacked the means to capitalize the new firm entirely by himself, so it agreed to loan him \$50,000.00, plus pay one-half of the expenses that would be needed to establish Watkins Perk, with Watkins contributing the \$50,000.00.

Claimant asserted that Watkins was to be responsible for Watkins Perk's United States operation, and was entirely responsible for preparing and filing the required application material with the NASD to qualify Watkins Perk as an NASD member firm. Claimant further asserted that there was a clear understanding that the parties were partners and that each was acting in a fiduciary capacity with respect to the other. Claimant also asserted that Watkins represented that he had contributed \$50,000.00 of capital to Watkins Perk, but never demonstrated that the \$50,000.00 contribution was in fact made.

Claimant contended that the parties reached a final agreement regarding Claimant's call option on 50% of Watkins Perk stock, a \$50,000.00 Promissory Note from Watkins to Claimant, and the introduction by Watkins and eventually Watkins Perk of all their European securities business to Claimant for execution and clearance on an exclusive basis. Claimant further contended that from May to June 1995, while Watkins continued to represent to it that he was guiding Watkins Perk through the NASD approval process, Watkins maintained an office with Swiss American Securities ("Swiss Credit"). Claimant also contended that Watkins explained that he needed to be able to service his clientele while waiting for the registration to become effective. Claimant alleged that it did not know the details of Watkins compensation arrangement with Swiss Credit.

Claimant further alleged that Watkins did open an office in Perrineville, New Jersey, and began to incur expenses which he claimed were related to qualifying and establishing a presence for Watkins Perk in the investment community, but never furnished complete evidence of such expenses. Claimant also alleged that, having no reason to suspect Watkins, it reimbursed him for one-half the of out-of-pocket expenses and a payment on account of future operating expenses of \$50,000.00.

Claimant asserted that, relying on Watkins ongoing representation that everything was moving forward, it expended substantial sums of money in excess of \$85,000.00 in order to supply Watkins Perk with the necessary means needed when it became registered. Claimant further asserted that on September 28, 1995, Watkins informed it that the NASD application process had been stalled, and blamed the delay on counsel he hired. Claimant also asserted that Watkins told it that Watkins Perk should be qualified as a full service broker-dealer rather than an introducing broker-dealer and that, therefore, would require regulatory capital of between \$250,000.00 to \$300,000.00. Claimant contended that the parties agreed that if the additional capital was required they would each contribute 50%.

Claimant further contended that in late November 1995, it discovered that Watkins had directly booked a trade through Goldman Sachs on behalf of a Dutch Broker that Watkins said would be booked through Claimant. Claimant also contended that when it pressed Watkins for details of the trade, Watkins began to refuse to answer his phone calls and became unwilling to articulate his plans or the status of the Watkins Perk application process. Claimant alleged that on November 9, 1995 Watkins stated for the first time that there were compliance problems and that he had unilaterally decided to hold up the NASD application.

Claimant further alleged that it received information evidencing that while Watkins was submitting expenses to it in connection with the organization and regulatory approval of Watkins Perk, Watkins was initiating trades and introducing them to its competitors. Claimant also alleged that it learned that Watkins had actively solicited its customers. Claimant asserted that it has recently discovered that the name Watkins Perk was changed by Watkins to Watkins International Securities, without any communication to it.

Respondents Watkins, Watkins Perk, and WIS (collectively referred to as "Respondents") maintained that in April 1995, Watkins and Wouter Perk ("Perk"), Claimant's principal, met and proposed to establish a broker/dealership, NASD member firm. Respondents further maintained that Watkins was to contribute initial capital of \$50,000.00, which he contributed on June 19, 1995 as evidenced by a bank statement. Respondents also maintained that Claimant was also to contribute \$50,000.00 in initial capital, plus pay the start-up expenses of establishing the broker/dealership and provide the capital needed for the lines of credit. Respondents contended that Claimant failed to remit its initial capital and, in fact, failed to remit any capital needed to establish the broker/dealership. Respondents further contended that Watkins went his own way and provided the additional funding of \$300,000.00 for WIS.

Respondents also contended that every time Watkins presented a bill for reimbursement to Claimant, or requested that Claimant provide evidence that it had the wherewithal to provide the capitalization needed to establish the broker/dealership, Perk would assure Watkins that the money would be forthcoming. Respondents maintained that by October 1995, after expenses totalling \$95,447.90 had been disbursed by Watkins, and Claimant failed to remit any initial capital, and remitted only \$50,000.00 toward expenses, Watkins served his ties with Claimant, dropped Claimant's name from the company name, and proceed on his own.

Respondents further maintained that prior to October 1995, Watkins had generated commissions and profits for Claimant of \$104,801 in anticipation of Claimant's financing and based on Perk's repeated promises that funds would be forthcoming.

In their Counterclaim, Respondents alleged that between May 1, 1995 and October 31, 1995, there were start-up expenses of \$95,447.90, of which Perk remitted only \$50,000.00, leaving a balance of \$45,447.90. Respondents further alleged that compensation should be award in the amount of \$50,000.00. Respondents also alleged that Claimant should not benefit by its conduct and should disgorge the profits it made of approximately \$54,801.00.

Claimant, in its reply to the Counterclaim, maintained that it never agreed to pay all the start-up expenses associated with Watkins Perk. Claimant further maintained that it did agree to advance one-half of the expenses after the NASD approval process began to drag on longer than expected. Claimant also maintained that Respondents avoid the fact that at the outset the parties never discussed or agreed that Watkins would draw a \$50,000.00 salary from a firm that had no revenues and was not even operational. Claimant contended that there was never any discussion that it would pay Watkins' car payments, car insurance bills, mobile phone bills, parking charges, toll charges, credit card bills and personal life insurance.

Claimant further contended that the parties also agreed that they would each contribute one-half of the firm's required regulatory capital, but until approval of the new firm appeared imminent, there was no discussion or pressing need for either partner to contribute its share of the regulatory capital. Claimant also contended that the parties never got to the point where the commitment to put up the required regulatory net capital actually ripened because it discovered that respondents conspired to deprive

it of the benefits of its bargain before Watkins Perk was approved by the NASD. Claimant denied that Watkins produced anywhere near \$104,801 in trading profits.

### **RELIEF REQUESTED**

Claimant Perk & Schmidt International BV requested an award directing Respondents to: (1) pay \$50,000.00 for the money paid to Watkins, plus interest; (2) reimburse the (more than) \$85,000.00 of expenses incurred by it for the benefits of Watkins; (3) pay monetary damages to compensate it for its future lost earnings; (4) remove all references to any association between Wouter Perk and Claimant and Watkins Perk or WIS and cease and desist from disseminating in any way whatsoever in the future any association between respondents and it; (5) render a full and complete accounting to Claimant; (6) reasonable attorneys' fees and expenses; (7) and that Respondents be assessed forum fees and expenses.

Respondents requested: (1) that the claims of the Claimant be dismissed in their entirety; (2) An award on their counterclaims in an amount to be determined by the Arbitration Panel; (3) Reimbursement to them of any arbitration filing fees, advanced costs 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 originals remain on file with the NASD Regulation, Inc.

### **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. The claims of Claimant against Respondents Watkins, Watkins Perk, and WIS are dismissed in their entirety.
2. Claimant be and hereby is liable and shall pay to Respondent Watkins the sum of \$17,137.50.
3. The parties claims for attorneys' fees are denied.
4. The parties shall bear their respective costs.
5. All other claims be and hereby are denied.

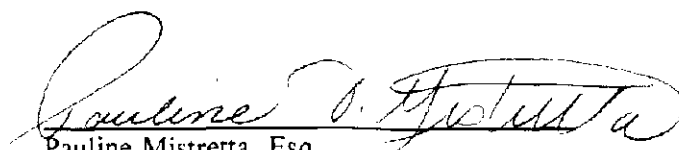
### **FORUM FEES**

Pursuant to Section 10205 of the Code of Arbitration Procedure, the Arbitration Panel has determined that the NASD shall retain the \$500 filing fee previously deposited by Claimant and the \$500.00 filing fee previously deposited by Respondents and have assessed the following Forum Fees:

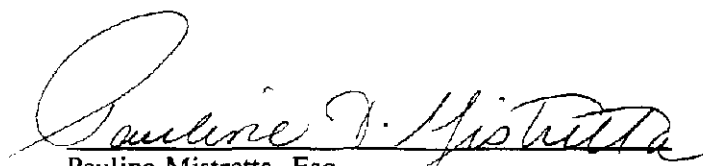
Pre-hearing conference	=	\$300.00
6 Sessions X \$750.00	=	\$3,000.00
minus Hearing deposit	=	<u>\$1,500.00</u>
Total outstanding	=	\$1,800.00

Claimant be and hereby is liable and shall pay to the NASD the sum of \$1,650.00, representing one-half of the forum fees assessed. Claimant previously deposited \$750.00 with the NASD. Therefore, Claimant owes \$900.00. Respondents Watkins, Watkins Perk and WIS be and hereby are jointly and severally liable and shall pay to the NASD the sum of \$1,650.00 representing one-half of the forum fees assessed. Respondents previously deposited \$750.00 with the NASD. Therefore, Respondents owes \$750.00.


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

  
Pauline Mistretta, Esq.

I, Pauline Mistretta, do hereby affirm that this is my decision in the above captioned matter.

  
Pauline Mistretta, Esq.

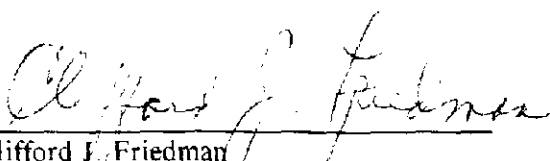
Date of Decision: November 27, 1996

  
Sheldon Lasher

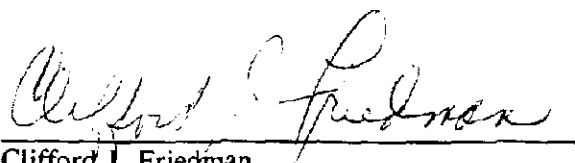
I, Sheldon Lasher, do hereby affirm that this is my decision in the above captioned matter.

  
Sheldon Lasher

Date of Decision: November 27, 1996

  
Clifford J. Friedman

I, Clifford J. Friedman, do hereby affirm that this is my decision in the above captioned matter.

  
Clifford J. Friedman

Date of Decision: November 27, 1996