

AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Howard Lorch

and

Case Number 96-00207

Name of Respondent

Clay Border

REPRESENTATION OF PARTIES

Howard Lorch ("Claimant") was represented by Timothy McDaniel, Esq. of McDaniel & Allen located in Houston, TX.

Clay Border ("Respondent") was represented by Jack D. Ballard, Esq. of Andrews & Kurth located in Houston, TX.

CASE INFORMATION

The Statement of Claim was filed on or about January 16, 1996.

Response to the Motion to Dismiss was filed by the Claimant on or about July 17, 1996.

The Submission Agreement of the Claimant was signed on December 31, 1995 by Howard Lorch.

The Statement of Answer was filed on or about April 10, 1996.

The Motion to Dismiss was filed on or about July 2, 1996.

The Submission Agreement of the Respondent was signed on April 10, 1996 by Clay Border.

HEARING INFORMATION

A pre-hearing conference was held on December 4, 1996 by telephone conference call for one (1) session before three arbitrators.

CASE SUMMARY

Claimant Howard Lorch alleged that from November of 1993 until May 16, 1994, Respondent Clay Border worked as an assistant under Claimant's direction. After Respondent resigned on or about May 16, 1994, Respondent became employed by PaineWebber, Inc. Claimant contended that since May 16, 1994, Respondent had systematically contacted many of Claimant's customers in an attempt to solicit business. Claimant further contended that Respondent copied or recorded information concerning the identity and telephone numbers of these clients in order to be able to achieve contact. As alleged, Respondent unlawfully appropriated the client's records since they were confidential and proprietary to Claimant. Claimant alleged that Respondent tortiously interfered with prospective contractual relationships. According to the claim, Claimant had a reasonable expectation that his clients would continue to do business with him but for interference by Respondent.

Respondent denied the allegations set forth in the Statement of Claim. Respondents specifically stated he worked as an associate broker for Lehman Brothers, Inc. with the same responsibilities as a broker. Respondent maintained that Claimant was difficult to work with and that after Claimant discovered Respondent was interviewing with other brokerage firms, Respondent was fired by Lehman Brothers, Inc. Respondent asserted that he did not sign any non-competition or confidentiality agreements with Claimant nor did he remove any documents or property belonging to Lehman Brothers, Inc. or Claimant. Respondent claimed that his contact with some of the clients he dealt with while at Lehman Brothers, Inc. after he joined PaineWebber, Inc. was customary in the securities industry.

RELIEF REQUESTED

Claimant requested an award for damages in an undisclosed amount.

Respondent requested that the claims asserted against him be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

Upon the request of the Respondent and with the approval of the arbitrators in accordance with Sections 10315 and 10324 of the Code of Arbitration Procedure (the "Code"), a pre-hearing conference was scheduled for December 4, 1996 in order for the parties to orally argue their positions with respect to the Respondent's motion to dismiss. After the pre-hearing conference and following careful consideration, the arbitrators determined that the motion to dismiss was granted with prejudice pursuant to Section 10305 of the Code.

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 Statement of Claim is hereby dismissed in its entirety with prejudice;
2. Any requests for relief not specifically granted herein is hereby denied; and
3. The parties shall bear their own costs including attorneys' fees except for forum fees specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session. There was one (1) session x \$600 = \$600 in forum fees. Pursuant to §10205(b) of the Code of Arbitration Procedure, 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 §10205(c) of the Code, the National Association of Securities Dealers Regulation, Inc. ("NASD Regulation") Office of Dispute Resolution 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 Regulation, Inc. Office of Dispute Resolution by Claimant Howard Lorch.

Signed:

Dated:

John A. Selman, Esq.
John A. Selman, Esq.
Public Arbitrator, Presiding Chair

January 20, 1997

Charles E. Martin CPA
Charles E. Martin, CPA
Public Arbitrator

January 24, 1997

Eli Bensky
Eli Bensky
Industry Arbitrator

January 21, 1997

Date served by the NASD Regulation, Inc.: January 30, 1997

NASD Regulation, Inc.
Arbitration No. 96-00207
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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:

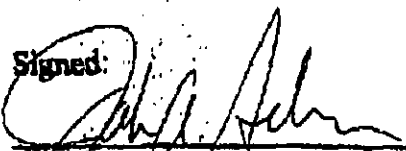
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FORUM FEES

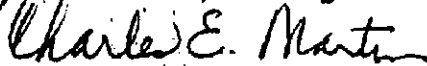
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Signed:



John A. Selman, Esq.
Public Arbitrator, Presiding Chair



Charles E. Martin, CPA
Public Arbitrator



Eli Benaky
Industry Arbitrator

Dated:

1/20/97

1-24-97

Date served by the NASD Regulation, Inc.: _____