

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Claimant/Counter-Respondent

Stein, Shore Securities, Inc.

vs.

NASD Arbitration No. 96-00249

Respondents/Counter-Claimants

American Investment Services Inc.;
Russell Wolter; Scott Garland;
Scott Sprandel; Daniel Reyer;
John Collins; William Ireland; and
R. Scott Pozen

REPRESENTATION OF PARTIES

For Claimant/Counter-Respondent: Stein, Shore Securities, Inc. ("Stein Shore") was initially represented by Delmer C. Gowing, III, Esq. and Mark L. Kowalsky, Esq. of Hertz, Schram & Saretsky in West Palm Beach, Florida. After counsel withdrew, Claimant was unrepresented and did not appear at hearing.

For Respondents/Counter-Claimants: American Investment Services Inc. ("AIS") was represented by Kristina M. L. Anderson, Esq. of Fishman & Merrick, P.C. in Chicago, Illinois.

Russell Wolter ("Wolter") and Scott Garland ("Garland") were represented by Kenneth F. Berg, Esq. in Chicago, Illinois.

William Ireland ("Ireland") and R. Scott Pozen ("Pozen") were represented by Leonard Gerstein, Esq. of Northbrook, Illinois.

John Collins ("Collins") and Scott Sprandel ("Sprandel") were represented Peter B. Shaeffer, Esq. in Chicago, Illinois.

Daniel Reyer ("Reyer") was represented Gail L. Yeatman, Esq. of Barack, Ferrazzano, Kirshbaum & Perlman in Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: January 18, 1996.

Claimant's Submission Agreement signed on: January 12, 1996 by Barry B. Stein, CEO, Stein Shore Securities, Inc.

Respondent AIS's Statement of Answer filed on: April 24, 1996.

Respondent AIS did not file an executed Submission Agreement.

Respondent AIS's Motion to Strike and Dismiss filed on: March 6, 1996.

Respondent/Counter-Claimants Wolter and Garland's Statement Answer and Counterclaims filed on: April 3, 1996. Respondent Wolter and Garland's Submission Agreement signed on: December 17, 1996.

Respondent/Counter-Claimants Pozen and Ireland's Statement of Answer and Counterclaim filed on: April 23, 1996. Respondents Pozen and Ireland did not file executed Submission Agreements.

Respondent Sprandel's Statement of Answer and Counterclaim filed on: April 19, 1996.

Respondent Sprandel's Submission Agreement signed on: April 15, 1996.

Respondent Sprandel's Motion to Dismiss Claim and to Bar Defense to Counterclaim filed: December 18, 1996.

Respondent Collins' Statement of Answer filed on: October 11, 1996.

Respondent Collins did not file an executed Submission Agreement.

Respondent Collins' Motion to Dismiss Claim filed on: December 18, 1996.

Daniel Reyer did not file an Answer or sign a Submission Agreement in this case.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: January 13, 1997 for One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Stein Shore, Inc. alleged that AIS Inc. et al. engaged in violations of Illinois and Florida common law; breach of contract; breach of their fiduciary and loyalty duties; unfair competition; theft; tortious interference with business relations; raiding; unlawful conspiracy; conversion and theft of

trade secrets, accounts, customer lists and confidential business information; unjust enrichment; and violations of the National Association of Securities Dealers, Inc. ("NASD") Fair and Just Principles of Trade. AIS, Inc. specifically alleged that:

1. Stein Shore Inc. was a full service brokerage firm with offices in Chicago, Illinois and Englewood, Colorado;
2. Individual Respondents are former sales agents of Stein Shore Inc. Wolter, Garland, Sprandel, Reyer, Collins and Ireland were employed in Stein Shore Inc. in Chicago, Illinois. Pozen was employed at Stein Shore Inc. in Engelwood, Colorado;
3. Stein Shore Inc. provided individual Respondents with sales support including advanced training, licenses, research and development information, advertising, promotions, sales literature, reputation, Stein Shore Inc.'s good will, customer accounts, customer referrals, customer reassignments, customer leads and general office supplies. In addition, the individual Respondents signed Registered Representative Employment Agreements indicating that customer information is Stein Shore Inc.'s confidential property;
4. AIS Inc. opened new offices in Engelwood, Colorado and Chicago, Illinois;
5. Over a six-month period, AIS Inc. raided ten Stein sales agents. The Englewood sales agents resigned without prior notice in violation of Respondents' employment agreements;
6. The Chicago sales agents also resigned without prior notice. Prior to leaving, the Chicago respondents misappropriated company documents, asset files, a customer account diskette, long distance calling card and confidential customer trade secrets; and
7. Stein filed for injunctive relief in Cook County, Illinois to prevent Respondents from soliciting Stein's customers. The Court allowed the customers to determine, for themselves, who would act as their broker. Stein voluntarily dismissed the state court action.

Respondent AIS denied the allegations set forth in the Claim. Respondent specifically stated that:

1. The individual Respondents left Stein Shore, Inc. because of poor working conditions including limited office support, low compensation and abusive superiors. As such, the individual Respondents approached AIS Inc. about an employment change. AIS Inc. did not raid Stein Shore Inc.'s sales agents;

2. Stein Shore Inc. has no protectable interest in the customer information because the information was not a legally protectible trade secret; Stein Shore, Inc. failed to provide training for the individual Respondents Series 7 exam, customer lists, lead information, market and sales training, research and development, or salaries which would indicate a protectible interest in Claimant's client base; and the information the brokers took was readily available outside Stein Shore; and

3. The remaining claims alleged against AIS Inc. should be dismissed for legal insufficiency.

Respondents Garland and Wolters denied the material allegations of the Statement of Claim, asserting that:

1. The unbearable conditions at Stein Shore forced their leaving, including abusive supervisors, "slave wages", and lack of business support, training and research;

2. There was never a conspiracy to close the Stein Shore offices, but simply a few brokers changing firms to secure better employment;

3. Letters were sent to clients after these Respondents submitted their resignations and not before. In addition, many of the accounts transferred to AIS were accounts of friends and family and were not a legally protectable interest; and

4. The remaining accounts are not legally protectable because Stein Shore did not have a "near permanent relationship" with the customers, it did not take affirmative steps to keep the information confidential, and Stein Shore did not provide any opportunities that would not have been otherwise available to brokers. Furthermore, Stein Shore has no legal right to prevent these Respondents from taking their personal notebooks.

Garland and Walters also asserted counterclaims for unpaid commissions and defamation. The claim for defamation alleged that Stein Shore submitted a Form U-5 to the NASD which contained false statements.

Respondents Pozen and Ireland denied the material allegations of the Statement of Claim, alleging that:

1. The brokers left Claimant because Stein Shore was not providing adequate office support, compensation or benefits. It was not the result of raiding or a conspiracy; and

2. Pozen is entitled to retain his customers as Stein Shore did not have a "near permanent relationship" with the customers.

In addition, Pozen filed a counterclaim for damages for compensation withheld and the filing of a false Form U-5. Ireland filed a counterclaim for defamation based upon the false statements made on his Form U-5.

Respondents Sprandel and Collins denied the material allegations of the Statement of Claim, alleging that:

1. Customer information was developed and obtained as a result of these Respondents activities. Stein Shore did not provide any customer information; and
2. Collins and Sprandel resigned because: 1) Stein Shore breached its compensation agreement with them; 2) Stein Shore required them to engage in improper and abusive sales practices; 3) They were concerned about the backgrounds and prior securities activities of management; 4) They observed unprofessional and dangerous conduct from the manager of the Chicago office; 5) Stein Shore did not provide health, dental or life insurance; and 6) AIS offered a better work environment and compensation package.

Sprandel asserted a counterclaim for unpaid compensation and defamation for the filing of a Form U-5 which contained false information.

RELIEF REQUESTED

Claimant requested an award in the amount of approximately \$2,400,000.00; a preliminary injunction preventing Respondents from using the misappropriated information; and costs and attorneys' fees.

Respondent AIS requested that the arbitrators strike and dismiss the Complaint against it and award them costs and attorneys' fees incurred in defending Claimant's action.

Respondents Wolter and Garland requested that Stein Shore's claim be dismissed and that they be awarded the following damages on their counterclaim: Garland the sum of \$1,632.40 and Walter the sum of \$1,084.87 for the withheld commissions; compensatory damages for each of \$60,000 and punitive damages for each of \$120,000 for the claim for defamation. At hearing, Wolter and Garland requested amendment of the Form U-5 and/or expungement of the false Form U-5 information from the CRD system.

Respondents Pozen and Ireland requested the arbitrators strike and dismiss all of Stein Shores claims. In addition, each requested the sum of \$50,000 in compensatory damages and the sum of \$50,000 in punitive damages on their counterclaims. Pozen requested an additional sum of \$9,380.00 in withheld commissions and reasonable compensation for services rendered in closing the Denver office. Respondent Pozen also requested that the Form U-5s filed by Claimant be expunged or. At hearing, Ireland requested expungement of the information on the Form U-5. Both Respondents also requested amendment of the Form U-5.

Sprandel and Collins requested that the Stein Shores' claims be dismissed. In addition, Sprandel requested compensatory and punitive damages in unspecified amounts, and that the panel order that the Form U-5 be amended. At hearing, Collins and Sprandel requested that the information on the Form U-5 be expunged or amended..

OTHER ISSUES CONSIDERED & DECIDED

Respondent AIS Inc., Pozen, Ireland, and Collins did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to §10201 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing, are bound by the determination of the arbitration panel on all issues submitted.

By letter dated May 21, 1996, Claimant withdrew without prejudice its claim against Respondent Daniel O. Reyer.

Claimant Stein Shore Inc. did not appear at the hearing. Pursuant to Section 10318 of the Code of Arbitration Procedure, the panel determined that Stein Shore Inc. received due notice of the hearing and that the hearing would continue in the Claimant's absence.

In the absence of a Claimant, Respondents moved to dismiss with prejudice the claims filed by Stein Shore Inc. After consideration, the Panel determined that the Motion would be granted and Stein Shores' claims against Respondents AIS, Wolter, Garland, Ireland, Pozen, Collins and Sprandel were dismissed with prejudice.

At hearing, Respondents Sprandel, Collins and Pozen moved that their requests for monetary damages for defamation on the Form U-5 filed by Claimant be dismissed without prejudice. After consideration, the Panel granted the motion.

At the hearing, Wolter and Garland withdrew without prejudice the counter-claim for commissions.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims filed by Claimant/Counter-Respondent Stein Shore Securities, Inc. against Respondents American Investment Services Inc., Russell Wolter, Scott Garland, William Ireland, R. Scott Pozen, John Collins, and Scott Sprandel are dismissed with prejudice;
2. Claimant/Counter-Respondent Stein Shore Securities, Inc. is liable for and shall pay to Respondent/Counter-Claimant Russell Wolter the sum of \$2,190.00 as actual damages for the withheld compensation;
3. In addition, Claimant/Counter-Respondent Stein Shore Securities, Inc. is liable for and shall pay to Respondent/Counter-Claimant Scott Garland the sum of \$2,190.00 as actual damages for the withheld compensation;
4. The panel hereby orders Claimant/Counter-Respondent Stein Shore Securities, Inc. to amend the Form U-5 of Respondent/Counter-Claimants Russell Wolter, Scott Garland, Scott Sprandel, John Collins, R. Scott Pozen, and William Ireland to reflect that Question 15 shall be marked "No" and that all mention of the alleged internal review be removed;
5. The NASD shall expunge from the CRD system any record of the alleged internal review or investigation reflected from the inaccurate Form U-5s amended above and also any record of this proceeding, if such exists;
6. Respondents John Collins, Scott Sprandel and R. Scott Pozens' requests for money damages for the false Form U-5 information are dismissed without prejudice;
7. Any claims for punitive damages are dismissed with prejudice and denied in the entirety;
8. The parties shall bear their own costs of arbitration, including any attorneys' fees. except for those specifically enumerated herein;
9. Any relief not specifically awarded is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$ 1000.00 per hearing session and \$300 for each prehearing conference, if any. There was One (1) session x \$ 1000.00 = \$1,000.00 in forum fees. Pursuant to §10332(b) 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 §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$ 500.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$ 1,000.00 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant/Counter-Respondent Stein Shore Securities, Inc. In addition, the Office of Dispute Resolution shall retain the \$2,500.00 expedited hearing fee paid by Claimant pursuant to Section 10335 of the Code of Arbitration Procedure and the \$500.00 member surcharge paid pursuant to Section 10333 of the Code of Arbitration procedure.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, Respondent American Investment Services Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the non-refundable member surcharge in the amount of \$500.00.

Dated:

/s/ Bradford S. Allen, Esq.
Bradford S. Allen, Esq.
Public Arbitrator, Presiding Chair

April 28, 1997

/s/ John T. Kelly, Esq.
John T. Kelly, Esq.
Public Arbitrator

May 5, 1997

/s/ Marc B. Horin
Marc B. Horin
Industry Arbitrator

April 30, 1997