

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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*In the Matter of Arbitration Between*

Southwest Securities, Inc.,

Claimant and Counter-Respondent,

and

No. 96-00605

David D. Dellinger,

Respondent and Counter-Claimant.

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## **REPRESENTATION OF PARTIES**

Claimant, Southwest Securities, Inc., was represented by Will S. Montgomery, Esquire of Jenkins & Gilchrist, located in Dallas, Texas.

Respondent, David D. Dellinger, was represented by Paul R. Lawrence, Esquire of Lawrence, Baca & Donohue, located in Houston, Texas.

## **CASE INFORMATION**

Claimant, Southwest Securities' Statement of Claim was filed on or about February 9, 1996.

Claimant, Southwest Securities' Answer to the Counterclaim was filed on or about March 31, 1997.

Claimant, Southwest Securities' Submission Agreement was signed on February 6, 1996 by Jerome S. Wade, Vice President & General Counsel of Southwest Securities, Inc.

Respondent, David D. Dellinger's Statement of Answer and Counterclaim was filed on or about June 19, 1996.

Respondent, David D. Dellinger's Submission Agreement was signed on June 19, 1996.

## **HEARING INFORMATION**

No hearings were held in this case as it proceeded under simplified arbitration pursuant to § 10302 of the NASD Code of Arbitration Procedure.

## **CASE SUMMARY**

Claimant, Southwest Securities, Inc. ("Claimant" or "Southwest"), brought this action to recover monetary damages allegedly caused by the failure of Respondent, David D. Dellinger ("Respondent"), to honor the written Margin Agreement that he entered into with Claimant.

According to Claimant, Respondent entered into the Margin Agreement on August 2, 1994, and thereafter placed orders pursuant to this agreement. Claimant asserted that Respondent agreed to maintain in his account with Southwest, sufficient cash and/or stock as required by all applicable statutes, rules, regulations, procedures, and customs that Southwest deemed necessary or advisable. Claimant further asserted that under the terms of the Margin Agreement, Respondent agreed to promptly satisfy all margin and maintenance calls and to satisfy, upon demand, any indebtedness and to pay any debit balance when due. Claimant alleged that Respondent's current debit balance was \$9,434.40.

Respondent denied the allegations set forth in the Statement of Claim as they related to any liability on his part. Respondent stated that Southwest violated the "Know Your Customer Rule" because the securities in question were odd-lot, non-liquid instruments that were well beyond his ability to pay for in the event of market decline. Respondent maintained that Claimant created a loss by accepting the securities with a 5% margin for a long period of time and then, without notice, over a period of days, raised the margin to 40%. According to Respondent, he and Southwest agreed that the securities had to be liquidated, and he provided the buyers, which should operate as an accord and satisfaction.

Respondent brought his Counterclaim to recover damages allegedly resulting from Claimant's pressure to make him pay, which has allegedly damaged his credibility and, thus, his ability to make sales and an income.

Southwest generally denied all allegations contained in Respondent's Counterclaim. Southwest argued that Claimant failed to establish a cause of action for damage to his reputation as a broker because, among other things, he failed to establish or prove any damages.

## **RELIEF REQUESTED**

Claimant, Southwest Securities, Inc., requested an award for compensatory damages in the amount of \$9,434.40, plus interest until paid, and costs and attorney's fees. Southwest Securities, Inc., as

Counter-Respondent, also requested that David D. Dellinger, as Counter-Claimant, be denied any recovery on his Counterclaim.

Respondent requested an award for \$20,000 in damages plus attorney's fees.

### 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 Respondent, David D. Dellinger, is liable for and shall pay Claimant, Southwest Securities, Inc., compensatory damages in the amount of \$9,432.90.
2. That Claimant, Southwest Securities, Inc., is liable for and shall pay Respondent, David D. Dellinger, compensatory damages in the amount of \$2,000.
3. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.
4. Pursuant to § 10322(c) of the Code, the NASD Regulation, Inc. 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 \$75 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant, Southwest Securities, Inc. The NASD Regulation, Inc. Office of Dispute Resolution shall also **retain** the non-refundable filing fee in the amount of \$100 previously paid by Respondent, David D. Dellinger. Respondent, David D. Dellinger is liable for and shall pay to Claimant, Southwest Securities, Inc. the sum of \$475 as partial reimbursement of the filing fee and hearing session deposit. Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$100 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant, Southwest Securities, Inc.

### AFFIRMATION

I, Raymond L. Britton, Jr., Esquire, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

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Arbitration No. 96-00605  
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Raymond L. Britton, Jr., Esquire  
Raymond L. Britton, Jr., Esquire  
Chairperson  
Public Arbitrator

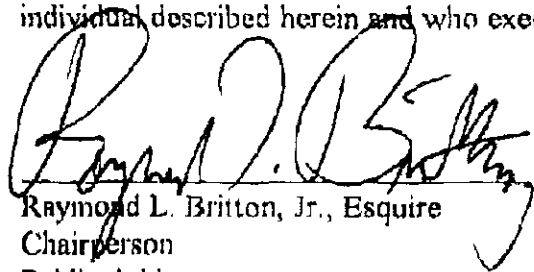
June 11, 1997  
Dated:

For NASD use only:  
Date Award was served on the parties: June 13, 1997

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**AFFIRMATION**

I, Raymond L. Britton, Jr., Esquire, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Raymond L. Britton, Jr., Esquire  
Chairperson  
Public Arbitrator

6-11-97

Dated:

For NASD use only:

Date Award was served on the parties: \_\_\_\_\_