

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

The Williams Capital Group, L.P.

96-00819

Name of Respondent

Sharpe Capital Inc.

CASE SUMMARY

In a case filed the National Association of Securities Dealers, Inc., on February 23, 1996, claimant the Williams Capital Group ("WCG" or "claimant"), through its representative and Chief Operating Officer Bruce M. Usher, alleged that respondent Sharpe Capital, Inc. ("Sharpe") failed to make a trade. Claimant further alleged that on February 23, 1995, Sharpe agreed to purchase 3,000 shares of GM stock from WCG at \$42.50 per share. Claimant also alleged that on March 2, 1995, Sharpe's clearing firm ceased operations and Sharpe refused to accept delivery of the shares, resulting in WCG selling the shares for a loss of \$8,250.00. Claimant asserted that on March 3, 1995, WCG received a letter from Sharpe, informing them that Sharpe will not take responsibility for the loss. Claimant further asserted that on January 25, 1996, Sharpe's clearing firm informed WCG that they had a valid claim, however it would be unlikely that WCG would receive any compensation. Claimant also asserted that on February 15, 1996 WCG called Sharp who informed them that Sharpe had not settled any claims with any other broker.

Respondent Sharpe Capital, Inc. ("Sharpe" or "respondent"), through its representative and counsel Michael C. Simon, Esq., maintained that on February 23, 1995, they agreed to purchase 3,000 shares of GM stock from claimant. Respondent further maintained that on March 2, 1995, Sharpe's clearing firm filed with SIPC protection and was unable to clear the instant trade. Respondent also maintained that pursuant to Article 3 Section 47 of the NASD Rules of Fair Practice, a clearing broker acts as the guarantor of all trades and that Sharpe's clearing firm, not Sharpe is legally responsible for the alleged loss suffered by claimant. Respondent contended that upon information and belief, NSSC settled all street side trades involving their clearing house. Respondent further contended that SIPC provides a mechanism whereby claims such as those raised herein are to be handled, namely a claim should be field with the trustee. Respondents also contended that they should not be made to pay, nor are they legally bound to do so.

RELIEF REQUESTED

Claimant The Williams Capital Group, L.P. requested \$8,825.00, plus \$575.00 in filing fees.

Respondent Sharpe Capital, Inc. requested the claim of the claimant be dismissed in their entirety, plus attorneys fees and costs.

AWARD

Pursuant to Section 10 of the NASD, Inc. Code of Arbitration Procedure, a single Industry Arbitrator, Noah Sorkin, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimant The Williams Capital Group, L.P. on February 23, 1995 and not by respondent the Sharpe Capital, Inc. as required by Sections 8 and 10 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, had decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Sharpe Capital, Inc. is liable and shall pay to the claimant The Williams Capital Group, L.P. \$8,825.00 in actual damages.
2. All other relief requests are denied.
3. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the claimant shall be retained by the NASD, Inc. Respondent Sharpe Capital, Inc. are liable and shall pay to the claimant The Williams Capital Group, L.P. \$575.00 as reimbursement of the filing fee.

AFFIRMATION

I, **NOAH D. SORKIN**, 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 oath and award.



Noah D. Sorkin, Esq.

Date of Decision:

August 27, 1996

REPORT OF ARBITRATOR

Both claimant and respondent acknowledge that there was an agreement regarding respondent's purchase of GM stock from claimant; there is no dispute as to the number of shares which respondent was to have purchased (3,000), nor is there any dispute as to the price-per-share at which this purchase was to have been completed (\$42.50).

Moreover, there is no evidence that this agreement was based, either in whole or in part, on respondent's ability to clear the transaction only through Adler, Coleman, as opposed to any other clearing firm through which respondent might have cleared this transaction after learning of Adler, Coleman's bankruptcy. Further, respondent provides no information as to why, after entering into this agreement with claimant, respondent failed to make alternative arrangements to complete the agreed upon transaction.