

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Robert W. Baird & Co., Incorporated

96-00948

Name of Respondent

Ross A. Weissenhofer

REPRESENTATION

For Claimant: Robert W. Baird & Co., Incorporated ("Baird") was represented by James J. Eccleston, Esq. of Uscian & Eccleston, located in Chicago, Illinois.

For Respondent: Ross Weissenhofer ("Weissenhofer") did not appear.

CASE INFORMATION

Statement of Claim filed: March 5, 1996.

Claimant's Submission Agreement signed on: February 26, 1996 by Deborah J. Fabritz, Associate General Counsel and Vice President, Robert W. Baird & Co., Incorporated.

Statement of Answer filed by Respondent on: August 29, 1996.

Respondent did not file an executed Submission Agreement .

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: November 12, 1996 for One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant Baird alleged that Weissenhofer had breached a demand note and failed to reimburse Baird for sums paid to Weissenhofer's former employee. Baird specifically alleged that:

1. Weissenhofer began his employment with Baird on March 10, 1994. At that time, he executed a Form U-4 in which he represented in Item 22f(4) that no self-regulatory organization or commodities exchange had disciplined him;
2. On April 21, 1994, Weissenhofer executed a demand note for \$20,000.00 which became immediately due and payable upon termination for cause;
3. In addition, Baird paid the sum of \$9,647.00 to Weissenhofer's former employee. Weissenhofer agreed to reimburse Baird the sum paid;
4. Baird terminated Weissenhofer on May 16, 1994 after learning that Weissenhofer had failed to truthfully respond to Item 22f(4);
5. Baird demanded payment for the sums loaned to Weissenhofer or paid on his behalf. He refused to pay. Baird recovered some sums from his accounts and have frozen the remainder of the assets held in his IRA.

Respondent Weissenhofer alleged that the contract was misrepresented and that his accounts were frozen without legal authority.

RELIEF REQUESTED

Claimant requested that an award be entered for compensatory damages of \$22,253.57; 10% interest compounded annually on the sum of \$12,596.57 from May 16, 1994 to the date of the award; reasonable attorneys' fees; costs of collection; seizure of the assets held in Weissenhofer's Baird accounts; and such other relief as was just and proper.

OTHER ISSUES CONSIDERED & DECIDED

Respondent did not appear at hearing, but contacted Claimant's counsel and the Office of Dispute Resolution staff by telephone before the hearing, advising that he could not attend and that he believed the hearing was scheduled for November 19, 1996. The Arbitrator reviewed the correspondence sent to Weissenhofer by the NASD Regulation, Inc., Office of Dispute Resolution, as well as the representations of counsel. Pursuant to Section 10318 of the Code of

Arbitration Procedure, the Arbitrator determined that the hearing would continue in the absence of the Respondent.

AWARD

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

1. Respondent Ross Weissenhofer is liable for and shall pay to the Claimant, Robert W. Baird & Co., Incorporated, the sum of \$22, 253.57 in compensatory damages, plus interest at the rate of 10% per annum accruing from May 16, 1994 until this award is paid in full;
2. In addition, Respondent Ross Weissenhofer is liable for and shall pay to the Claimant, Robert W. Baird & Co., Incorporated, the sum of \$8,995.00 as attorneys' fees in this matter. In deciding to award attorneys' fees, the Arbitrator considered the Promissory Note executed by the Respondent on April 21, 1994, as well as the argument of Claimant, and determined that authority existed for an award of attorneys' fees to the Claimant, Robert W. Baird & Co., Incorporated;
3. Claimant Robert W. Baird & Co., Incorporated's request for an order that it may seize the assets of Claimant Ross Weissenhofer's IRA account is denied;
4. The parties shall bear their own costs of arbitration except for those specifically enumerated herein; and
5. Any relief not specifically awarded is hereby denied.

OTHER COSTS

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$200.00 member firm surcharge paid by Robert W. Baird & Co., Incorporated pursuant to Section 10333 of the Code of Arbitration Procedure.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the following Forum Fee are assessed: One (1) hearing session x \$300.00 per session = \$300.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$500.00 claim filing fee paid by Claimant. In addition, the Office of Dispute Resolution shall retain the \$300.00 hearing session deposit previously deposited by the Claimant, Robert W. Baird & Co., Incorporated, as payment of the forum fee. Respondent Ross Weissenhofer is liable for and shall pay to Claimant Robert W. Baird & Co., Incorporated the sum of \$800.00 as reimbursement of the claim filing fee and forum fee paid by the Claimant.

Concurring Arbitrators' Signatures

Name

Date

/s/ Joy Pava Shulruff, Esq.

December 3, 1996

Joy Pava Shulruff, Esq.

Industry Arbitrator

For Dispute Resolution Use Only

Date of Decision: December 3, 1996