

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Daniel A. North,

Claimant,

and

No. 96-01285

Monroe Parker Securities, Inc., John P. Clancy,
and Richard S. Schneider,

Respondents.

REPRESENTATION OF PARTIES

Claimant Daniel A. North was represented by Ronald Cohen, Esquire of Cohen & Small, located in Houston, Texas.

Respondents Monroe Parker Securities, Inc., John P. Clancy, and Richard S. Schneider were represented by Jacob H. Zamansky, Esquire of Singer, Bienenstock, Zamansky, Ogele & Selengut, LLP, located in New York, New York.

CASE INFORMATION

Claimant Daniel A. North's Statement of Claim was filed on or about March 22, 1996. Claimant Daniel A. North's Submission Agreement was signed on March 6, 1996.

Respondent Monroe Parker Securities, Inc., John P. Clancy, and Richard S. Schneider's Statement of Answer was filed on or about May 15, 1996. Respondent Monroe Parker Securities, Inc.'s Submission Agreement was signed on May 22, 1996 by Alan Lipsky, President of Monroe Parker Securities, Inc. Respondent John P. Clancy's Submission Agreement was dated May 22, 1996. Respondent Richard S. Schneider's Submission Agreement was signed on May 22, 1996.

HEARING INFORMATION

Pre-hearing conferences were held on: December 11, 1996 for one (1) session; and February 7, 1997 for one (1) session.

The hearing was held on: February 25, 1997 for two (2) sessions; and February 26, 1997 for two (2) sessions.

The hearing was held in Houston, Texas.

CASE SUMMARY

Daniel A. North ("Claimant") brought this action to recover losses resulting from the alleged unsuitable securities transaction, misrepresentations and omissions of material facts, fraud, violations of federal and state securities laws and breach of fiduciary duty of John P. Clancy ("Clancy") and Richard S. Schneider ("Schneider"), registered representatives of Monroe Parker Securities, Inc. ("Monroe Parker").

According to Claimant, on January 4, 1995, Clancy told him that he needed to move his account, which consisted of stock in Steven Madden Ltd. into Steven Madden Class A warrants. Claimant asserted that he was rushed into executing this transaction and sold 46,000 shares of Steven Madden Ltd at \$5.00 per share and bought 65,000 Steven Madden Class A warrants at $3\frac{5}{8}$ per warrant. Claimant stated that each warrant enabled the holder to purchase one share of Steven Madden Ltd. by surrendering the warrant and paying the exercise price. However, Claimant asserted, Clancy did not tell him that the exercise price was \$4.75, and Claimant did not know to ask. Claimant complained that by adding the exercise price of \$4.75 to the cost of each warrant of $3\frac{5}{8}$ resulted in a cost of $8\frac{3}{8}$ for the right to convert each warrant into a share of Steven Madden, Ltd., which was trading for only \$5. Claimant further asserted that the purchase price for the warrants on January 11, 1995 was \$235,640, and that on January 27, 1995 the Steven Madden Class A warrants had fallen to $1\frac{3}{8}$ and his investment had fallen to \$89,375 for a total loss of \$146,265.

Next, Claimant alleged that on April 24, 1995, Schneider induced him to sell his securities in his Monroe Parker account to purchase 48,000 shares of AquaNatural Company for \$81,010 with a settlement date of May 1, 1995. Claimant asserted that Schneider failed to tell Claimant that on March 23, 1995, the State of New Jersey barred brokers and investors in New Jersey from trading AquaNatural stock and barred insiders and market makers, such as Monroe Parker, from liquidating their stock in that state. Claimant reported that AquaNatural was delisted by NASDAQ effective May 25, 1995.

In sum, Claimant alleged that Clancy and Schneider and their employer, Monroe Parker, committed fraud and deceit, violated the Texas "Blue Sky" laws, the Securities Act, the Exchange Act, and Rule 10(b)-5.

Respondents Monroe Parker, Clancy, and Schneider (hereinafter collectively referred to as

"Respondents") denied the allegations set forth in the Statement of Claim. Respondents stated that Claimant was a sophisticated high net worth investor who had significant prior market experience in stocks, bonds, and other securities prior to establishing his account at Monroe Parker with the investment objectives of growth and speculation. According to Respondents, Claimant had also received profits from his trading at Monroe Parker, which consisted of a \$71,220 profit within two months on WTS Octagon, Inc., Class A, a \$47,830 profit in one month on Octagon, Inc., and a \$13,260 profit within two months on Steven Madden, Limited common stock. Respondents asserted that Clancy did inform Claimant of information specifically pertaining to the exercise of the warrants complained of. Respondents further asserted that the New Jersey Order on AquaNatural was served on the issuer and the underwriter, not Respondents, and would not be material to a reasonable Texas investor's investment decision. Furthermore, Respondents contended, the New Jersey Order simply denied a secondary offering by AquaNatural and secondary market trading exemptions within the State of New Jersey.

Respondents asserted the following affirmative defenses: (1) Claimant failed to state a claim for which relief may be granted; (2) Claimant failed to state a claim against Respondents' (3) Respondents acted in good faith and did not directly or indirectly induce the acts alleged to have constituted the Claimant's causes of action or alleged violations; (4) Respondents had no knowledge of, or reasonable grounds to believe, in the existence of facts by reason of which there existed liability on the part of the alleged control persons; (5) if any damage or loss was sustained by Claimant, his damage or loss was caused or contributed to by Claimant's own actions, fault or lack of due diligence; (6) Claimant acted in reckless disregard of facts of which he had, or should have been aware, and failed to exercise the required care and diligence; (7) Claimant at all relevant times had, or should have had, full knowledge of all material facts concerning their securities accounts maintained with Respondents, including the positions maintained and the transactions made therein, and, therefore, should be estopped from bringing this proceeding or from obtaining any recovery herein; (8) Claimant authorized and directed the execution of all transactions in his securities account maintained with Respondents; (9) Claimant authorized and/or ratified all transactions in their securities accounts maintained with Respondents with full knowledge of all material facts with respect thereto, and, therefore, is barred by applicable principles of waiver and ratification; (10) Claimant with full knowledge of all material facts concerning his securities accounts maintained with Respondents waived the alleged damage claims set forth in the Statement of Claim and the alleged damage resulting therefrom by failing to take timely and appropriate action prior to incurring such damage; (11) Respondents in discharging their duties, if any, to Claimant, acted in good faith and exercised at least that degree of care, diligence, and skill which ordinarily prudent persons would exercise in similar circumstances and like positions; (12) the implied common law theory of "respondeat superior" was not available under the Securities Act of 1933 and the Securities Exchange Act of 1934 as well as under the Texas Blue Sky Laws; (13) the arbitration panel did not have the power or authority to award punitive damages in this arbitration; (14) the arbitration panel did not have the power or authority to award attorney's fees in this arbitration; (15) Claimant was barred from recovery on his claims because he knowingly assumed the risk of his investment; and (16) to the

extent that Claimant obtained cash and/or income tax savings as a result of his investments, Claimant was barred from recovery on his claims.

RELIEF REQUESTED

Claimant Daniel A. North requested an award for: damages equal to the difference between the amount of his investments through Monroe Parker Securities, Inc., plus a reasonable rate of return on the amount of his investments, and the amount he eventually receives upon liquidation, an amount in excess of \$180,255; the return of all commissions arising from his investments; reimbursement for all his losses incurred with Monroe Parker Securities, Inc.; interest from the date of the losses; approximately \$30,000 in income taxes incurred in 1994 for paper profits in the account before the account was wiped out; reasonable attorney fees; costs of this proceeding; and punitive damages.

Respondents Monroe Securities, Inc., John P. Clancy, and Richard S. Schneider requested that the claims asserted against them be dismissed in their entirety with prejudice and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing in this matter, Respondents Monroe Parker Securities, Inc., John P. Clancy, and Richard S. Schneider moved to strike portions of Claimant Daniel A. North's Statement of Claim. After taking into consideration this motion, and all timely responses thereto, the undersigned panel of arbitrators denied this motion.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

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 Respondents Monroe Parker Securities, Inc., John P. Clancy, and Richard S. Schneider are, jointly and severally, liable for and shall pay Claimant Daniel A. North actual damages in the amount of \$130,000;

2. That Respondents Monroe Parker Securities, Inc., John P. Clancy, and Richard S. Schneider are, jointly and severally, liable for and shall pay Claimant Daniel A. North pre-judgment interest in the amount of \$13,000, plus post-award interest at the rate of 6% that accrues from the date of receipt of this award until the award is paid;
3. That Respondents Monroe Parker Securities, Inc., John P. Clancy, and Richard S. Schneider are, jointly and severally, liable for and shall pay Claimant Daniel A. North attorneys' fees in the amount of \$30,000. In deciding to award attorneys' fees, the undersigned arbitrators considered the pleadings, the evidence and the testimony presented by the parties;
4. 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.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) pre-hearing conferences \times \$300 = \$600, and there were four (4) hearing sessions \times \$750 = \$3,000 in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (the "Code"), 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 § 10322(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant Daniel A. North.

In accordance with § 10332(c) of the Code, Respondents Monroe Parker Securities, Inc., John P. Clancy and Richard S. Schneider are, jointly and severally, liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$2,250 in forum fees. Respondents Monroe Parker Securities, Inc., John P. Clancy and Richard S. Schneider are, jointly and severally, liable for and shall pay to Claimant Daniel A. North the amount of \$950 as reimbursement of the \$200 filing fee and the \$750 hearing session deposit.

Respondent Monroe Parker Securities, Inc. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution, pursuant to § 10333 of the Code, the non-refundable member surcharge in the amount of \$350.

The NASD Regulation, Inc. Office of Dispute Resolution shall retain postponement fees in the

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amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution
by Respondent Monroe Parker Securities, Inc.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures

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

April 30, 1997
Dated:

Frank M. Romano
Frank M. Romano
Panelist
Public Arbitrator

April 30, 1997
Dated:

Christine E. Monical, Esquire
Christine E. Monical, Esquire
Panelist
Industry Arbitrator

May 16, 1997
Dated:

For NASD Regulation, Inc. use only:
Date Award was served on the parties: May 16, 1997