

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Ferris, Baker Watts, Inc.

96-01737

Name of Respondent

Isaac N. Smith, V

REPRESENTATION

Claimant Ferris, Baker Watts, Inc. ("Claimant") was represented at the hearing by Theodore W. Urban, General Counsel, Ferris, Baker Watts, Inc., Washington, D.C.

Respondent Isaac N. Smith, V ("Respondent") was represented at the hearing by James B. Lees, Jr., Esq. Hunt Lees Farrell & Kessler, Charleston, West Virginia.

CASE INFORMATION

The Statement of Claim was filed on April 17, 1996.

Claimant filed an Answer to Respondent's captioned Counterclaim on December 24, 1996.

Claimant's Submission Agreement was executed on May 9, 1996.

Respondent's Statement of Answer and Counterclaim was filed on July 12, 1996.

Respondent's Submission Agreement was executed on July 12, 1996.

HEARING INFORMATION

Hearing Dates/Sessions: February 19, 1997/two sessions
 February 20, 1997/three sessions

Hearing Location: Omni Hotel
 Richmond, Virginia

CASE SUMMARY

Claimant alleged that Respondent, upon his employment with Claimant in August, 1993, had received transition compensation and executed both a Promissory Note, forgivable over a three-year period, and an Investment Executive Standard Agreement. Claimant alleged that Respondent was at all times an employee at will under West Virginia law and, accordingly, his employment could be terminated with or without cause. On November 9, 1995, following an internal investigation of a customer complaint of unauthorized trading, Claimant terminated Respondent's employment. Claimant contends that, upon termination, Respondent owed Claimant \$94,000 under the terms of the Promissory Note. Claimant credited Respondent with a finder's fee of \$11,217.18 and net commissions earned of \$33,439.14 upon

an offering of Capital State Bank stock; and charged Respondent with the net costs incurred by Claimant of \$2,913.80 in remediating the McCutcheon and Perry customer complaints.

Respondent denied all allegations of wrong-doing and maintained that he was terminated without good cause. While Respondent acknowledged that he was an employee at will, he maintained that the Investment Executive Standard Agreement which he executed, pursuant to West Virginia law, bars Claimant from claiming or collecting any amounts owed to Claimant by Respondent as a result of an involuntary termination of Respondent by Claimant unless such termination was for good cause. Respondent maintained that Claimant terminated him without good cause and Claimant should be barred both legally and equitably from collecting the amounts claimed under the Promissory Note. Respondent maintained that any expenses incurred by Claimant were not for resolving the McCutcheon or Perry customer complaints. In the alternative, Respondent maintained that the expenses were the sole responsibility of Claimant.

In his Counterclaim, Respondent alleged that, as a result of his termination, Respondent was denied commissions on the sale of approximately \$3,000,000.00 of Capital State Bank stock. Respondent alleged that these commissions were the result of his efforts to raise additional capital from friends and associates of the Bank's founder in excess of the amount which Claimant previously had agreed with the founder would not be subject to the offering sales concession. Respondent also claimed that he had been denied proper credit of sales commissions or fees on eleven specific purchases of the Bank's stock.

Respondent also alleged that Claimant was unjustified in reporting to regulatory authorities the customer complaints which Claimant had received concerning his handling of two customer accounts. Respondent alleged that such reports constituted libel and slander and had caused him irreparable harm by adversely affecting his ability to find employment.

In response to the allegations of the Counterclaim, Claimant maintained that even though Respondent was an employee at will, Claimant had good cause to terminate his employment. Claimant also maintained that it had previously identified for Respondent various compliance matters which caused concern and warned him that further compliance problems would be grounds for termination. Claimant maintained that it received a written customer complaint which alleged Respondent had engaged in two unauthorized bond transactions and that its review of those allegations were the basis of its termination of Respondent's employment. Claimant also maintained that it was required to submit Forms U-5 and RE-3 to the regulatory authorities based solely upon the receipt and substance of the McCutcheon and Perry written complaints. In addition, Claimant maintained that the reports accurately described the complaints received and displayed no malice or intent to harm Respondent; that the submission of such reports was subject to a qualified privilege; and that matters other than the reports caused or contributed significantly to Respondent's difficulties in finding subsequent employment.

With respect to Respondent's allegations about the Bank offering, Claimant maintained that it had never received any commission or sales concession on the shares upon which Respondent was claiming a commission. Claimant maintained that, in the same manner as the Bank's founder had previously negotiated with Claimant to the effect that Claimant would not earn a commission on officers, directors, and related party purchases, the founder had also negotiated (as a condition of his further purchases necessary to close the offering) that Claimant would not be paid a commission on his or his associates' stock purchases, effected for purposes of closing the offering. Claimant also denied that, as to the eleven disputed commissions, Respondent was entitled to any additional credit. Claimant asserted that it had credited the commissions properly and that Respondent had not established that certain of the sales had actually occurred, let alone that Respondent was entitled to commissions upon them.

RELIEF REQUESTED

Claimant alleged as damages the \$52,257.48 balance due on the Promissory Note (after adjustment for credits due Respondent); interest on the Note from November 9, 1995 through the date of the hearing (\$10,029.14); costs of bringing the action to collect upon the Note (\$1,400.00); and attorneys fees of 15% (\$7,838.62); all interest, costs and attorneys fees as provided for in the Note and totalling \$71,525.24. Claimant requested that the Counterclaim be dismissed.

Respondent requested that Claimant's claims be dismissed in their entirety. In the Counterclaim, Respondent requested that Claimant pay commissions and fees on investments allegedly sold through Respondent's efforts for which he had not been reimbursed, that Claimant pay Respondent for damages attributed to his termination and lost income and to correct statements related to the disclosure of his termination.

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with the NASD.

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's Counterclaim is denied in its entirety.
2. That Respondent is liable to and shall pay to Claimant \$52,257.48 as the amount due on the promissory note after adjustments.
3. That Respondent is liable to and shall pay to Claimant \$10,029.14 interest at fifteen percent (15%) from November 9, 1995 until February 19, 1997; plus interest at fifteen percent (15%) or \$21.4757 per day until the date of the award.
4. That Respondent is liable to and shall pay to Claimant \$500.00 as reimbursement for the claim filing fee according to the terms of the promissory note.
5. That Respondent is liable to and shall pay to Claimant \$7,838.62 in attorney's fees (fifteen percent of the amount payable on the note) according to the terms of the promissory note.
6. That any and all relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

5 sessions x \$600.00 = \$3,000.00

Forum Fees are assessed at \$1,500.00 to Claimant and \$1,500.00 to Respondent.

Claimant is to receive credit for the \$600.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimant of \$900.00.

Respondent is to receive credit for the \$300.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Respondent of \$1,200.00.

Fees are payable to the National Association of Securities Dealers Regulation, Inc.

DATE

CONCURRING ARBITRATORS' SIGNATURES

3/10/97

Barton B. Skeen, Jr.

Barton B. Skeen, Jr., Chairman
Public Arbitrator

Kitty G. Grubb
Public Arbitrator

Phillip R. Clark
Public Arbitrator

Industry

Date Decision Served by NASD Regulation: March 12, 1997

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Barton B. Skeen, Jr., Chairman
Public Arbitrator

03/04/97

Kitty G. Grubb
Kitty G. Grubb
Public Arbitrator

Phillip R. Clark
Public Arbitrator
Industry

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CONCURRING ARBITRATORS' SIGNATURES

Barton B. Skeen, Jr., Chairman
Public Arbitrator

Kitty G. Grubb
Public Arbitrator

3/8/97

Phillip R. Clark
Phillip R. Clark
Public Arbitrator
Industry

Date Decision Served by NASD Regulation: March 12, 1997