

## NASD AWARD

NASD Regulation, Inc., Office of Dispute Resolution

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In the Matter of the Arbitration Between

Name of Claimants

Allen F. Secor  
Donald Puff

96-03295

Name of Respondents

Legend Equities Corporation  
Legend Investment Management, Inc.

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REPRESENTATION

For Claimants Allen Secor and Donald Puff ("Claimants"): John E. Lawlor, Attorney at Law, Minzola, NY.

For Respondents Legend Equities Corporation and Legend Investment Management, Inc. ("Respondents"): Richard L. Martens, Esq. and Debra A. Jenks, Esq. of the law firm of Boose Casey Gilkin Lubitz Martens McBane & O'Connell, West Palm Beach, FL.

CASE INFORMATION

Allen Secor ("Secor") and Donald Puff ("Puff") Statement of Claim filed: July 29, 1996.  
Secor's Submission Agreement signed on: July 23, 1996.  
Puff's Submission Agreement signed on: July 24, 1996.

Respondents' Statement of Answer filed: September 24, 1996.  
Legend Equities Corporation's ("Equities") Submission Agreement executed by Glenn T. Ferris, Vice President of Legend Equities Corporation on: September 23, 1996.  
Legend Investment Management's ("LIM") Submission Agreement executed by Glenn T. Ferris, Vice President of Legend Investment Management on: September 23, 1996.

HEARING INFORMATION

Pre-Hearing Conference: January 29, 1998 - one session with the panel

Hearing Dates/Sessions: July 27, 1998 - two sessions  
July 28, 1998 - two sessions  
July 29, 1998 - one session

Hearing Location: Hyatt Regency, Buffalo, NY

CASE SUMMARY

Claimants alleged, among other things, that Claimants who were registered representative employed with

Respondents voluntarily terminated their registrations with Equities and LIM on June 21, 1996. Claimants alleged that they are entitled to certain commissions and fee income that Respondents have failed to pay to Claimants.

Equities and LIM denied all allegations of wrongdoing asserted by Claimants in their claim. Respondents maintained that Claimants breached their written agreement and were no longer entitled to commissions and fees.

Equities asserted a counterclaim against each Claimant for breach of contract and defamation. Equities maintained that there was a valid assignment of a contract from P and I Equities Corporation to Equities. Equities maintained that the only thing that changed between the predecessor company and its successor was the name change on the letterhead. Equities alleged that Claimants deliberately, wilfully and intentionally violated their Sales Representatives Agreements that expressly prohibited "solicitation of any Client or account of the Company" for one year after their resignations. Equities asserted that it is entitled to its full measure of damages pursuant to the contracts.

Claimants responded to the counterclaim and maintained, among other things, that the 1989 agreements are not binding and enforceable; that there was no assignment to Equities; that there was no course of dealing that created any evidence of any understanding that Claimant were bound by the 1989 agreement; there was nothing improper about the circumstances surrounding the Claimants resignation; and, Claimants were within their rights to solicit and serve clients previously serviced by them. Claimants further maintained that the counterclaim seeks to exact an extortionate penalty unenforceable as a matter of law in both New York and Florida.

#### RELIEF REQUESTED

Claimant Secor at the hearing requested commissions on issued and written business of \$8,626.55 and trailing commissions of \$11,889.62. Claimant Puff requested commission on issued and written business of \$4,972 and the trailing commission \$6,620. Claimants requested that market timing commissions and custodial fees and other costs and fees be deferred to the panel.

Equities in its post hearing brief requested liquidated damages for solicitation from Secor in the total amount of \$1,917,445.23 and from Puff liquidated damages for solicitation in the amount of \$1,132,097.34. In the alternative, Equities requested from the Claimants actual damages in the amount of approximately \$1.1 million.

#### OTHER ISSUES CONSIDERED & DECIDED

At the opening of the hearing, the parties reached an agreement that LIM be dismissed with prejudice. The parties agreed that Claimants were never registered with LIM and never transacted any business through that broker/dealer with either securities business, investment advisory business, or custodial fees.

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 NASD Regulation, Inc. Office of Dispute Resolution ("NASD Regulation").

### AWARD

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

1. Claimants' claim is denied in its entirety.
2. Claimant Allen F. Secor is liable to Legend Equities Corporation on its counterclaim and Claimant Allen F. Secor shall pay to Legend Equities Corporation the sum of \$20,000; no pre judgement interest is awarded on this amount.
3. Claimant Donald Puff is liable to Legend Equities Corporation on its counterclaim and Claimant Donald Puff shall pay to Legend Equities Corporation the sum of \$10,000; no pre judgement interest is awarded on this amount.
4. That the parties shall bear their respective costs, including attorneys' fees, except as Other Costs and Forum Fees are specifically addressed below.
5. That any and all requests for relief not specifically addressed herein are denied in their entirety.

### OTHER COSTS

Equities and LIM were each assessed a Member Surcharge Fee of \$350 which each has paid.

### FORUM FEES

Pursuant to Rule 10332 and Rule 10205 of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Claimants paid a non refundable forum fee of \$500 and a hearing session deposit of \$750.

Respondent paid a non refundable fee of \$500 for their counterclaim and a hearing session fee of \$1,000.

$(1 \text{ pre hearing conference with the full panel} \times \$1000) + (5 \text{ hearing sessions} \times \$1000) = \$6,000$  minus Claimants hearing session deposit of \$750 and Respondents hearing session deposit of \$1000 = net \$4,250 due.

Forum Fees Assessed Against: 2/3 of the outstanding forum fees are assessed against Allen F. Secor so that he will be forum fees in the amount of \$2,833. 1/3 of the outstanding forum fees are assessed against Donald Puff so that he is assessed forum fees in the amount of \$1,417.

Fees are payable to the NASD Regulation.

Date Award Signed

11/2/98

Concurring Arbitrators' Signatures

David Buch

David Buch, Esq., Chairperson  
Public Arbitrator

I, David Buch, Esq., 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 award.

David Buch

David Buch, Esq.

George B. Melrose  
George B. Melrose, Panelist  
Public Arbitrator

I, George B. Melrose, 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 award.

George B. Melrose  
George B. Melrose

Roy R. Neureuter  
Roy R. Neureuter, Panelist  
Industry Arbitrator

I, Roy R. Neureuter, 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 award.

Roy R. Neureuter  
Roy R. Neureuter

Date Award Served by NASD Regulation: November 6, 1998

Date Award Signed

Concurring Arbitrators' Signatures

\_\_\_\_\_  
David Buch, Esq., Chairperson  
Public Arbitrator

I, David Buch, Esq., 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 award.

\_\_\_\_\_  
David Buch, Esq.

11/2/98

George B. Melrose  
George B. Melrose, Panelist  
Public Arbitrator

I, George B. Melrose, 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 award.

George B. Melrose  
George B. Melrose

\_\_\_\_\_  
Roy R. Neureuter, Panelist  
Industry Arbitrator

I, Roy R. Neureuter, 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 award.

\_\_\_\_\_  
Roy R. Neureuter

Date Award Served by NASD Regulation:

November 6, 1998

Date Award Signed

Concurring Arbitrators' Signatures

\_\_\_\_\_  
David Buch, Esq., Chairperson  
Public Arbitrator

I, David Buch, Esq., 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 award.

\_\_\_\_\_  
David Buch, Esq.

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George B. Melrose, Panelist  
Public Arbitrator

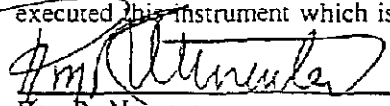
I, George B. Melrose, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
George B. Melrose

10-30-98

\_\_\_\_\_  
Roy R. Neureuter, Panelist  
Industry Arbitrator

I, Roy R. Neureuter, 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 award.

  
\_\_\_\_\_  
Roy R. Neureuter

Date Award Served by NASD Regulation: November 6, 1998