

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Dean Witter Reynolds, Inc.,

Claimant and Counter-Respondent,

and

No. 96-04069

Frederick B. Blagg,

Respondent, Counter-Claimant,
and Third Party Claimant,

and

E. Brad Hudgens, and Robert W. Bass,

Third Party Respondents.

REPRESENTATION OF PARTIES

Claimant and Counter-Respondent, Dean Witter Reynolds, Inc., and Third Party Respondents, E. Brad Hudgens, and Robert W. Bass, were represented by Elizabeth Robben Murray, Esquire of Friday, Eldredge & Clark, located in Little Rock, Arkansas.

Respondent, Counter-Claimant, and Third Party Claimant, Frederick B. Blagg, was represented by Michael S. McCrary, Esquire of Hargraves and McCrary, located in Hot Springs, Arkansas.

CASE INFORMATION

Dean Witter Reynolds, Inc.'s Statement of Claim was filed on or about September 10, 1996.

Dean Witter Reynolds, Inc., E. Brad Hudgens, and Robert W. Bass' Reply to Frederick B. Blagg's Counterclaim and Third Party Claim was filed on or about November 25, 1996.

Dean Witter Reynolds, Inc.'s Submission Agreement was signed on September 10, 1996 by Ralph P. Schiavo, Vice President, Senior Attorney.

The NASD Regulation, Inc. Office of Dispute Resolution has no record of a properly executed submission agreement from either E. Brad Hudgens or Robert W. Bass.

Frederick B. Blagg's Statement of Answer, Counterclaim, and Third Party Claim was filed on or about October 17, 1996.

Frederick B. Blagg's Submission Agreement was signed on October 16, 1996.

HEARING INFORMATION

A pre-hearing conference was held on March 27, 1997 for one (1) session.

The hearing was held on: July 9, 1997 for two (2) sessions; and July 10, 1997 for one (1) session.

The hearing was held in Little Rock, Arkansas.

CASE SUMMARY

Claimant, Dean Witter Reynolds, Inc. ("Dean Witter" or "Claimant"), brought this action to recover amounts owed on a promissory note by Respondent, Frederick B. Blagg ("Mr. Blagg").

According to Claimant, Mr. Blagg was employed by Dean Witter as an account executive. Claimant asserted that for value received, on July 17, 1995, Mr. Blagg executed and delivered to Dean Witter a promissory note (the "Note") in the principal amount of \$125,433.00, payable in four installments. Claimant averred that the Note provided, *inter alia*, that if Mr. Blagg's employment by Dean Witter was terminated for any reason, the unpaid balance of the Note would become due and payable. Claimant further asserted that Mr. Blagg terminated his employment with Dean Witter effective May 24, 1996 at which time all outstanding amounts of principal under the Note became immediately due and payable. Claimant alleged that Mr. Blagg breached the Note by failing to pay the principal sum of \$125,433.00, plus accrued interest at the rate of 7% from July 17, 1995 all of which is now due and owing under the Note.

Mr. Blagg denied the allegations set forth in the Statement of Claim as they related to any liability on his part. Mr. Blagg alleged that the Note represented only a portion of the employment agreement with Dean Witter. Mr. Blagg further alleged that Dean Witter, through its agents E. Brad Hudgens ("Mr. Hudgens") and Robert W. Bass ("Mr. Bass"), breached the employment agreement by not opening a branch office in Hot Springs Village, Arkansas, in which he was to be placed, and failed to honor the agreed payout percentage. According to Mr. Blagg, he had been damaged by Dean Witter's breach of the employment agreement by a sum in excess of \$95,188.59.

In his Counterclaim, Mr. Blagg alleged that Dean Witter's actions in breaching the employment agreement, through Mr. Hudgens and Mr. Bass, were intentional and reckless and done in willful and wanton disregard of Mr. Blagg's rights and were done solely for the purpose of benefitting Dean Witter at the expense of Mr. Blagg. Mr. Blagg asserted that, as a result of the breach of the contract

and the violation of the duty of commercial reasonableness, fair dealing, and good faith, he had been damaged.

In his Third Party Claim, Mr. Blagg alleged that Mr. Hudgens and Mr. Bass willfully, recklessly and intentionally made false representations of material facts to him, knowing such representations were false with an intent to induce him to act in reliance on the misrepresentations directly resulting in damage to Mr. Blagg.

Dean Witter, Mr. Hudgens, and Mr. Bass denied the allegations of Mr. Blagg's Counterclaim and Third Party Claim. According to them, in July 1995, with an understanding of the uncertainty of whether a Hot Springs Village office would open, Mr. Blagg joined Dean Witter. Dean Witter, Mr. Hudgens, and Mr. Bass further stated that through the time Mr. Blagg left Dean Witter, which was in May 1996, management made every effort to gain authorization to open a Hot Springs Village office, and eventually secured space in Hot Springs Village on which an office is currently being built and will open shortly. Dean Witter, Mr. Hudgens, and Mr. Bass contended that they did not deceive Mr. Blagg.

RELIEF REQUESTED

Dean Witter Reynolds, Inc. requested an award for: the amount of \$125,433.00 due and owing under the agreement; accrued interest at the contract rate of 7% from July 17, 1995 through the date of the arbitration award; costs of this arbitration; and all reasonable attorney fees.

Frederick B. Blagg requested that the claims asserted against him be dismissed in their entirety and that he be awarded his costs and attorneys' fees. For his Counterclaim and Third Party Claim, Frederick B. Blagg requested an award for damages, pre-judgment interest, attorney's fees, and punitive damages.

Dean Witter, Inc., E. Brad Hudgens, and Robert W. Bass requested that Frederick B. Blagg's Counterclaim and Third Party Claim be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

E. Brad Hudgens and Robert W. Bass did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration, but are required to submit to arbitration pursuant to § 10301 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

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 submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Frederick B. Blagg is liable for and shall pay Dean Witter Reynolds, Inc. actual damages in the amount of \$125,433.00, interest in the amount of \$8,780.00, and attorneys fees in the amount of \$26,874.00.
2. Frederick B. Blagg's Counterclaim and Third Party Claim are dismissed in their entirety with prejudice.
3. 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 was one (1) pre-hearing conference x \$300 and there were three (3) hearing sessions x \$750 = \$2,550 in forum fees. Pursuant to § 10205(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 § 10205(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$500 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 Dean Witter Reynolds, Inc.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Dean Witter Reynolds, Inc.

The NASD Regulation, Inc. Office of Dispute Resolution shall **retain** postponement fees in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Frederick B. Blagg.

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Pursuant to § 10205(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fees in the amount of \$1,000 and shall retain as forum fees the hearing session deposit in the amount of \$450 for the Counterclaim and the Third Party Claim previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Frederick B. Blagg.

Pursuant to § 10205(c) of the Code, Frederick B. Blagg is liable for and shall reimburse Dean Witter Reynolds, Inc. for its hearing session deposit in the amount of \$750. In addition, Frederick B. Blagg is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,350 in additional forum fees.

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

Concurring Arbitrators' Signatures

Thomas A. Thornhill, Jr.
Thomas A. Thornhill, Jr.
Chairperson
Industry Arbitrator

July 16, 1997
Dated:

Gary S. Jefferson, Esquire
Gary S. Jefferson, Esquire
Panelist
Industry Arbitrator

July 17, 1997
Dated:

Thomas Pearce Wilson, Esquire
Thomas Pearce Wilson, Esquire
Panelist
Industry Arbitrator

July 16, 1997
Dated:

For NASD use only:
Date Award was served on the parties: July 25, 1997