

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Margaret Archer

Claimant,

and

No. 96-04416

Boris Glikberg, and

Whitehouse & Moore Investments, Inc.,

Respondent.

REPRESENTATION OF PARTIES

For Claimant: Margaret Archer ("Claimant") was represented by Patrick T. Driscoll, Jr. Esq. of Hickey, Driscoll, Kurfirst, Patterson & Melia, located in Chicago, Illinois.

For Respondents: Boris Glikberg ("Glikberg") was represented by Kenneth J. Fleischer, Esq., of Chicago, Illinois. Whitehouse & Moore Investments, Inc. ("Whitehouse") was not represented in pleadings or at the hearing in this action.

CASE INFORMATION

Claimant's Statement of Claim was filed on: October 4, 1996.

Claimant's Submission Agreement was signed on: October 2, 1996.

Respondent Glikberg's Statement of Answer was filed on: February 20, 1997.

Respondent Glikberg's Submission Agreement was signed on: November 7, 1996.

HEARING INFORMATION

Pre-Hearing Conference: March 10, 1997 for one (1) session.

Hearing Dates and Sessions: March 12, 1997 for two (2) sessions;
March 19, 1997 for one (1) session; and
March 20, 1997 for one (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant brought this action to recover damages allegedly resulting from false statements used in

the preparation and filing of a U-5 form caused by Glikberg while acting within the scope of his duties as Vice-President of Whitehouse, asserting claims that Glikberg was liable for libel per se and intentional infliction of emotional distress. Claimant specifically asserted in her claim that:

1. She became employed by Whitehouse as a commission sales broker on or about August 16, 1990 and tendered her voluntary written resignation therefrom on September 10, 1990;
2. On or about October 4, 1990, Glikberg caused the publication of a U-5 form by tendering it to the NASD. The U-5 form prepared at the direction of Glikberg for Whitehouse falsely stated that Claimant "Currently is, or at termination was, the individual under internal review for fraud or wrongful taking of property, or violating investment-related statutes, regulations, rules or industry standards of conduct;"
3. The U-5 also falsely stated that Archer was under criminal proceedings initiated by Whitehouse for conspiring to break into its office and conspiring to steal account files, books and records that belong to the manager and brokers, and was thereby discharged from the firm;
4. Glikberg knowingly and maliciously caused publication of the U-5 form with the intent to injure Claimant in her good name and cause her to be unable to obtain employment with another licensed securities dealer. This conduct by Glikberg was extreme and outrageous.

Respondent Glikberg denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on his part. Glikberg specifically denied ever being a corporate officer, branch manager, or a compliance officer, and further denied that at all times he acted within the scope of his duties for Whitehouse. Glikberg stated that his duties at Whitehouse never included writing, reviewing or filing U-5 forms. Furthermore, according to Glikberg, at the time that the statements were made, Claimant was the subject of an internal investigation to determine whether she conspired with an individual who burglarized their offices, and thus Claimant's allegations are not actionable even if the investigation ultimately did not result in her arrest and conviction.

Glikberg asserted the following affirmative defenses: Claimant's claims are barred by the one-year Statute of Limitations for libel; statements required on the U-5 form are entitled to a qualified privilege; Claimant's loss of business and/or income, if any, may be due to intervening and/or superseding causes; Claimant failed to mitigate any damages that she may have sustained; Claimant fails to state a separate cause of action for intentional infliction of mental distress; and any damages Claimant sustained were caused by other parties, for which Glikberg is entitled to set off any liability against their misconduct.

RELIEF REQUESTED

Claimant requested an award for punitive and compensatory damages in an amount in excess of \$100,000.00.

Respondent Glikberg requested that the claims asserted against him be denied, and that he be awarded attorneys' fees, in an amount not less than \$10,000, and costs.

OTHER ISSUES CONSIDERED AND DECIDED

The NASD Regulation, Inc. Office of Dispute Resolution was unable to locate Whitehouse, and, therefore, was unable to serve the Statement of Claim and Notice of Hearing in the subject case upon this Respondent. Respondent Whitehouse's membership in the NASD was terminated on March 27, 1991. Therefore, this action proceeded against Glikberg only.

Prior to the hearing, Claimant moved to dismiss on grounds of non-arbitrability and Glikberg moved to dismiss the Statement of Claim. The undersigned panel of arbitrators denied both of these motions.

Prior to the hearing, Glikberg also moved to dismiss based on the legal issue of abatement. The undersigned panel of arbitrators requested that the parties present evidence at hearing of whether the claim against Glikberg abated when Whitehouse ceased to exist and whether the claim abated because the Statement of Claim alleges that Glikberg was acting within the scope of his authority at all times. Based upon the panel's decision on the merits, this Motion is moot.

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 Regulation, Inc. Office of Dispute Resolution.

AWARD

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

1. If acceptable to NASD Regulation, Inc., the NASD shall expunge from the CRD system any record of the alleged break in, pending felony and conspiracy to steal accounts stated in the DRP-5 dated October 4, 1990 for Margaret Archer;
2. All remaining requests for relief are hereby dismissed with prejudice and denied

in the entirety;

3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and

4. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to § 10205 of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed: one (1) pre-hearing conference session x \$300.00 + Four (4) hearing sessions x \$750.00 per session = \$3,300.00.

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 \$500 and shall **retain** as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant Margaret Archer. In addition, Claimant Margaret Archer is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution additional forum fees in the amount of \$2,550.00 (= \$3,300.00 total forum fees - \$750.00 hearing session deposit).

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

Concurring Arbitrators' Signatures

/s/ James L. Schwartz, Esquire
James L. Schwartz, Esquire
Chairperson/Public Arbitrator

June 16, 1997

Dated:

/s/ Michael J. Dolesh, Esquire.
Michael J. Dolesh, Esquire
Public Arbitrator

June 17, 1997

Dated:

/s/ Albert Pick, III
Albert Pick, III
Industry Arbitrator

June 17, 1997

Dated: