

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Howard, Weil, Labouisse, Friedrichs, Inc.

96-04758

Name of Respondent

Dorsey & Company, Inc.

REPRESENTATION

For Claimant: Steven F. Barley, Esq. of the law firm of Miles & Stockbridge, Baltimore, Maryland.

For Respondent: Mark P. Seyler, Esq. of the law firm of Barkley & Thompson, L.C., New Orleans, Louisiana.

CASE INFORMATION

Statement of Claim filed: October 25, 1996.

Claimant's Submission Agreement signed on: October 18, 1996.

Statement of Answer filed by Respondent on: February 4, 1997.

Respondent's Submission Agreement signed on: January 29, 1997.

HEARING INFORMATION

Two telephonic pre-hearing conferences were conducted with the arbitration panel on August 15 and 18, 1997. In addition, the evidentiary hearing was conducted in this matter on October 26, 27, 28 and 29, 1998 in New Orleans, Louisiana for a total of nine sessions.

CASE SUMMARY

Claimant alleged the following: This is an action by Howard, Weil, Labouisse, Friedrichs, Inc. ("Howard Weil") to collect a portion of defense costs owed to it by Dorsey & Co., Inc. ("Dorsey"). These defense costs were advanced by Howard Weil on Dorsey's behalf to defend Dorsey in massive litigation involving two taxable municipal bond underwriting syndications of which Dorsey was a member. Dorsey, as well as the other underwriting participants, were sued in their capacity as underwriters of these bond offerings. The litigation was massive and exposed Dorsey to in excess of \$1 billion dollars of potential liability. Howard Weil, on behalf of these syndicates, organized a joint defense in the litigation, which Dorsey joined. Dorsey accepted the representation of the joint defense and was represented throughout years of litigation by the joint defense counsel. This representation

resulted in a favorable settlement on behalf of Dorsey, as well as the other members of the syndicate. Dorsey participated fully in the settlement of the litigation. Dorsey agreed at the time of the formation of the syndicate, after the onset of litigation and throughout the course of the litigation to pay its proportionate share of the joint defense costs, but never did so. In addition, the joint defense costs were allocated to Dorsey in a fashion that is customary in the industry and in keeping with the agreement of the parties. Despite its acceptance of the benefits of the joint defense, despite its agreement to pay defense costs both before and after the onset of litigation, and despite the undisputed custom in the industry concerning the allocation of defense costs, Dorsey refused to reimburse Howard Weil for its proportionate share of defense costs incurred in the litigation.

Respondent Dorsey asserted that it does not owe the amounts claimed by Claimant Howard Weil and does not have any liability to Howard Weil for the following reasons: The alleged Agreement Among Underwriters ("AAU") upon which Howard Weil relies was never validly entered into by or on behalf of Dorsey; Howard Weil is seeking to obtain greater rights than former Senior Manager Drexel Burnham Lambert, Inc. would have had under that alleged AAU; the form of AAU Howard Weil contends was executed provides for, and the senior managers of the offerings at issue in each case made, a downward adjustment of Dorsey's initial participation in each of the bond offerings, but Howard Weil seeks to violate the provisions of the alleged AAU by disregarding the adjustments that were actually made; even if the adjustment made to Dorsey's actual participation in the offering of the bonds in question was deemed not to constitute adjustments to Dorsey's participation within the meaning of the alleged AAU Howard Weil contends was executed, the alleged AAU provides that no bonds would be allocated for sale by a selling group of non-underwriter securities brokers, but in violation of that provision a selling group was formed, and all but \$1,000,000.00 of Dorsey's participation in the sale of the \$350,000,000.00 of bonds in question was diverted to the said selling group, and that diversion should be deemed to constitute an adjustment to Dorsey's participation in the offerings in question; even if the alleged AAU was executed on Dorsey's behalf, and even if no downward adjustment has been made or is deemed to have been made to Dorsey's participation in the bond offerings in question (which is denied), the alleged AAU nowhere provides for imposition on Dorsey of an increased share of any settlement costs or litigation expenses based upon the bankruptcy of former senior manager Drexel Burnham Lambert; Dorsey and Howard Weil never entered into any other agreement for the sharing of defense costs from the litigation surrounding the bond offerings in question; and, because Dorsey was forced to pay a disproportionately large share of the settlement costs for the plaintiffs' claims in the litigation surrounding the bond offerings in question, and because the defense counsel selected by Howard Weil violated Dorsey's express instructions, and released Dorsey's claim for contribution or indemnity to recover all or part of the settlement costs Dorsey paid under protest, Howard Weil should not be entitled to recover still additional moneys from Dorsey when Dorsey has already paid more in settlement of the original plaintiffs' claims than the total of its reasonable share of settlement and defense costs for that litigation.

RELIEF REQUESTED

Claimant requested compensatory damages in the sum of \$163,439.92 plus pre-judgment interest of \$39,495.28 plus attorneys' fees, expenses, and expert fees of \$112,665.26.

Respondent requested a dismissal, with prejudice, of the claim and that Dorsey be awarded its costs and expenses incurred, and such other relief as justice or the nature of the case may require.

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 original(s) remain on file with NASD Regulation, Inc.

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:

Respondent is liable and shall pay to the Claimant the sum of \$154,063.95 plus pre-judgment interest in the sum of \$35,049.56 plus simple interest at the rate of 9% per annum from the date of decision until the date of payment of the Award.

Each party shall bear their respective costs including attorneys' fees.

OTHER FEES

Pursuant to Rule 10205 of the Code of Arbitration Procedure ("Code"), Claimant has paid to NASD Regulation, Inc. the \$500.00 claim filing fee.

Pursuant to Rule 10333 of the Code, Claimant and Respondent have each paid to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

Pursuant to Rule 10319 of the Code, Claimant has paid to NASD Regulation, Inc. the sum of \$750.00 representing the adjournment fee for the hearings scheduled for October 28 through 30, 1997, and the sum of \$1,000.00 representing the adjournment fee for the hearings scheduled for May 5 through 7, 1998.

Claimant has paid to NASD Regulation, Inc. the sum of \$30.00 in administrative costs.

FORUM FEES

Pursuant to Rule 10205c of the Code of Arbitration Procedure, forum fees in the sum of \$8,250.00 (two pre-hearing conferences panel \$1,500.00 plus nine sessions x \$750.00) are assessed as follows:

Claimant is assessed the sum of \$4,125.00 less the \$750.00 previously deposited in partial satisfaction thereof leaving a balance due in the sum of \$3,375.00.

Respondent is assessed the sum of \$4,125.00.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

/s/
Terry F. Peppard, Esq.

Industry

/s/
Ernest Lino Jordan, Jr.

Industry

/s/
David J. Park

Industry

Date of Decision: December 29, 1998