

7-10-85

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Billy R. Thedford,

Claimant,

and

No. 96-04965

State Street Securities, Bradley White
and Bryan O'Leary,

Respondents.

REPRESENTATION OF PARTIES

Claimant, Billy R. Thedford, appeared pro se in these proceedings.

For Respondents, State Street Securities and Bradley White, Bradley White of State Street Securities appeared pro se and appeared as the corporate representative for State Street Securities. Respondent, Bryan O'Leary, appeared pro se in these proceedings.

CASE INFORMATION

Claimant, Billy R. Thedford's Statement of Claim was filed on or about November 14, 1996. Claimant, Billy R. Submission Agreement was signed on October 28, 1996.

Respondents, State Street Securities', Bradley White's and Bryan O'Leary's Statement of Answer was filed on or about January 9, 1997. Respondents, State Street Securities', Bradley White and Bryan O'Leary's Submission Agreements were signed on December 19, 1996.

HEARING INFORMATION

The hearing was held on September 17, 1997 at 9:00 a.m., for two (2) sessions, in Dallas, Texas.

CASE SUMMARY

Claimant executed an agreement with State Street Securities, on or about January 8, 1996, where he agreed to perform certain services as an independent contractor for State Street Securities under NASD regulations, state and federal laws and the parties agreed that State Street Securities would not have any right to establish any specific operating procedures for Claimant and the Claimant would only engage in security transactions through State Street Securities and not through any individual or other broker/dealer. The Claimant also provided State Street Securities indemnification against losses which might occur by virtue of any transactions or services performed by the Claimant. Their agreement also provided that termination without cause required 30 days written notice and that the agreement was the sole agreement between the parties. The Claimant and Respondents had offices in the same building and communicated by telephone. At the time this arrangement was entered into, Claimant had advised State Street Securities that he had clients with low cost Bonneville Pacific distressed bonds in the clients accounts. The parties had an verbal understanding that Claimant was to obtain three bids on sale of bonds; that Claimant could not make trades on his own; and that only the principals of State Street Securities could place or make the trade orders. The understanding also was that trades in any equity securities would be made or placed by one of the principals of State Street Securities.

On April 23, 1996, Claimant obtained bids to sell 100 Bonneville Pacific Bonds for two clients and directed Mr. O'Leary to make a trade by sale of the bonds to Asiel & Co in New York for a stated price. The bonds were moving upward in price. The trade was made by Mr. O'Leary. On April 24, Claimant obtained bids to sell 100 Bonneville Pacific Bonds for two clients and directed Mr. O'Leary to make a trade by sale of the bonds to Rivkin Securities in New York for a stated price. There was a delay in execution by Mr. O'Leary and a number of phone calls were placed by Claimant to Mr. O'Leary's office concerning a timely execution of the trade to Rivkin. After a period of time had elapsed, the Claimant was told by Mr. O'Leary that he had unilaterally decided to sell the bonds to Southwest Securities, the clearing house for State Street Securities, for about two points more than the stated price to Rivkin. Mr. O'Leary did not contact nor consult with Rivkin nor Claimant in connection with the trade to Southwest and maintained that only he had the right to make trades and that the higher price was justification for the trade. Later that day, Claimant directed Mr. O'Leary to sell 100 Bonneville Pacific bonds at the stated price to Rivkin and Mr. O'Leary made this trade with Rivkin from Claimant's account.

On the same day and because the handling of the Bonneville transaction, Claimant states he resigned and was given some time to transfer his accounts. Three more transactions were processed by State Street Securities through April 29, 1996 for Claimant. State Street Securities issued a U-5 dated April 24, 1996 indicating a voluntary resignation by Claimant.

On June 6, 1996, Claimant contacted State Street Securities regarding payment of commissions for the five transactions made from April 24 through April 29 and was told the commissions would not be paid to him and Mr. O'Leary threatened to amend the U-5 to indicate an

illegal trade if the matter of the commissions was not dropped. On April 6, 1996, Mr O'Leary filed amended U-5 and under section 15 stated:

"Mr Thedford placed a trade with a bond dealer when he knew fully that he was unauthorized to do so. Further, he attempted to do this unauthorized transaction in a customer account at a price that was below market values."

On June 17, 1997 the amended U-5 was called to the attention of Claimant by a third party and Claimant's attorney contacted the Respondents in regard to this matter. Claimant believes his business reputation has been damaged.

It is not disputed that the bond trade was authorized by the client of Claimant. The failure of Mr. O'Leary to make the requested trade with Rivkin caused Claimant to request a sale of similar bonds from his account to maintain his business relationship with Rivkin. A NASD investigation into the matter found that no action was warranted.

Respondents Bradley White, State Street Securities and Bryan O'Leary state that Claimant made a bond trade with Rivkin which was unauthorized because State Street had not granted any authority to Claimant to make trades. Because of this transaction, Respondents maintain they fired Claimant on April 24, 1996. In making the trade with Southwest, Mr. O'Leary did not believe it was necessary nor required to check first with Rivkin or Claimant and believed that the Rivkin trade would be below market levels. Mr. O'Leary maintains that he had previously advised Claimant that if he did trades on his own, he would be terminated immediately and not paid commissions that month.

RELIEF REQUESTED

Claimant, Billy R. Thedford, requested an award for \$2,776.25 in actual damages for commissions due, costs, attorneys fees, and punitive damages. Claimant also requested the reinstatement of the U-5 showing a voluntary resignation.

Respondents, State Street Securities, Bradley White and Bryan O'Leary, requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs in responding to this matter.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by Claimant, Billy R. Thedford, the undersigned arbitrator has determined that the NASD shall expunge the June 6, 1996 U-5 of Billy R. Thedford from its records and files and reinstate the April 24, 1996 U-5 for Claimant, Billy R. Thedford.

Upon review of the file and the representations made by Claimant, Billy R. Thedford, the undersigned

arbitrator has determined that Respondents, have been properly served with the Statement of Claim pursuant to §§ 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrator has also determined that Respondents, State Street Securities, Bradley White and Bryan O'Leary, had received due notice of the hearing as required under § 10318 of the Code.

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 and the post-hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent, State Street Securities, is liable for and shall pay to Claimant, Billy R. Thedford, the amount of \$2,776.25 in actual damages;
2. That Respondent, Bryan O'Leary, is liable for and shall pay to Claimant, Billy R. Thedford, the amount of \$1,454.60 in actual damages.
3. That Respondents are jointly and severally liable for and shall pay to Claimant, Billy R. Thedford, the costs of arbitrating this matter with, State Street Securities paying one-half (½) of Claimant's arbitration costs and Bryan O'Leary paying one-half (½) of Claimant's arbitration costs.
4. That the NASD shall expunge the June 6, 1996 U-5 of Billy R. Thedford from its records and files and reinstate the April 24, 1996 U-5 for Claimant, Billy R. Thedford.
5. 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.

FORUM FEES

Forum fees are calculated at the rate of \$500.00 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were two (2) hearing sessions x \$500.00 = \$1,000.00 in forum fees. Pursuant to § 10332(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 § 10332(c) of the Code, the NASD Regulation, Inc., Office of Dispute Resolution shall retain the non-refundable filing fee of \$300.00 and shall retain as forum fees the hearing session deposit of \$500.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant, Billy R. Thedford. Respondents, State Street Securities and Bryan O'Leary are liable for and shall pay to NASD Regulation, Inc., Office of Dispute Resolution the sum of \$500.00, the part of the total sum of \$1,000.00 in forum fees, and shall reimburse Claimant, Billy R. Thedford, for the sum of \$500.00 as the other as the other part of forum fees which the Claimant has already paid to the NASD Regulation, Inc., Office of Dispute Resolution in his hearing session deposit.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge of \$100.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by State Street Securities.

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

Concurring Arbitrator's Signature:

/s/ Donald H. Fidler

November 18, 1997

Donald H. Fidler, Esq.

Dated.

Chairperson

Public Arbitrator

For NASD use only:

Date Award was served on the parties: December 10, 1997