

37007

AWARD

**NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.
OFFICE OF DISPUTE RESOLUTION**

In the Matter of the Arbitration Between

Duncan Williams, Inc.
Claimant,

and

Case Number 96-05745

David Wayne Treat
Respondent.

REPRESENTATION OF PARTIES

Claimant, Duncan Williams, Inc. was represented by Stephen H. Biller, Esquire of Baker, Donelson, Bearman & Caldwell, located in Memphis, TN.

Respondent, David Wayne Treat was represented by Hugh L. McKenney, Esquire of McKenney & Jesse, located in Houston, TX.

CASE INFORMATION

The Statement of Claim of Claimant, Duncan Williams, Inc. was filed on or about December 17, 1996.

The Amended Statement of Claim was filed on or about April 9, 1997.

Claimant, Duncan Williams, Inc. did not file a properly executed Submission Agreement.

The Statement of Answer and Motion to Dismiss was filed by Respondent, David Wayne Treat on or about March 4, 1997.

The Submission Agreement of Respondent, David Wayne Treat was signed on March 4, 1997.

The Response of Claimant, Duncan Williams, Inc. to the Respondent's Motion to Dismiss was filed on or about April 9, 1997.

HEARING INFORMATION

The hearing was held on September 25, 1997 in Houston, TX for a total of one (1) hearing session.

CASE SUMMARY

Duncan Williams, Inc., ("Claimant"), alleged that David Treat Wayne ("Respondent"), who was a former employee of the Claimant company, failed to repay a promissory note to the Claimant company in the amount of \$7,330.88 and signed on September 9, 1996 when he left the Claimant company's employ. In addition, the Claimant asserted that the Respondent also owed \$1,177.37 for advances made to Respondent while he was an employee. Combining the promissory note amount and the amount of other advances paid, Claimant stated that Respondent owed a total of \$8,508.25. Claimant further alleged that the writing added to "Exhibit B," the promissory note, which reads: "Time to be automatically extended to 12, 31, 97," is not valid or enforceable, as the writing was added pursuant to Respondent's promises to remain an employee of the Claimant company.

David Wayne Treat, the Respondent in this matter, denied that he owed any sum of money to the Claimant company. Indeed, Respondent asserted that when Claimant became concerned that he would leave the employ of their company, Claimant's representative, Richard Holland, informed Respondent that Respondent's commission payments would be withheld until he executed the promissory note. Respondent alleged that needing the commission payments, he signed the promissory note. In addition, Respondent averred that the additional amount which Claimant sought was not from advances and that no document existed as to the payment of such advances. Respondent asserted the affirmative defenses of duress, waiver, estoppel, ripeness of claim, usury and improper amount claimed.

RELIEF REQUESTED

Claimant, Duncan Williams, Inc. requested an award for \$8,508.25 in actual damages plus interest, costs and reasonable attorneys' fees..

Respondent, David Wayne Treat requested that the Statement of Claim be dismissed in its entirety and that he be awarded costs.

OTHER ISSUES CONSIDERED & DECIDED

On or about June 13, 1997, the undersigned arbitrator denied Respondent, David Wayne Treat's Motion to Dismiss after reviewing the relevant written submissions.

Claimant, Duncan Williams, Inc. did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration yet is required to submit to arbitration pursuant to §10201 of the NASD Code of Arbitration Procedure (the "Code") and having filed the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

At the hearing, Respondent, David Wayne Treat requested that the original promissory note dated September 9, 1996 be held in escrow with the NASD Regulation, Inc. Office of Dispute Resolution until the final determination of the case by the undersigned arbitrator. The arbitrator granted the request.

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. Richard Chaffee informed the undersigned arbitrator that the award payments would be withheld until he presented the award to the undersigned arbitrator. The undersigned arbitrator stated that needing the award payments, as signed the undersigned arbitrator, is not a condition for the award. **AWARD**

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

1. The Statement of Claim filed by Claimant, Duncan Williams, Inc. is denied in its entirety and dismissed with prejudice;
2. The original promissory note dated September 9, 1996 signed by Respondent, David Wayne Treat shall be returned to Claimant, Duncan Williams, Inc.
3. Other than forum fees which are specifically addressed below, any claims or relief requests not specifically awarded are hereby denied in their entirety and dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$300.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There was one (1) hearing session x \$300.00 = \$300.00 in forum fees. Pursuant to §10205(b) of the 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 \$500.00, the \$100.00 member surcharge imposed pursuant to §10333 and shall retain as forum fees the hearing session deposit in the amount of \$300.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant, Duncan Williams, Inc.

Arbitrator's Signature:

Dated:

Robert M. Birenbaum

October 23, 1997

Robert M. Birenbaum

Industry Arbitrator, Presiding Chair

For NASD use only:

Date served: October 24, 1997