

AWARD

NASD Regulation, Incorporated Office of Dispute Resolution

In the Matter of Arbitration Between

Everen Securities, Inc.,

Claimant,

and

No. 97-00111

Allan R. Singleton,

Respondent.

REPRESENTATION OF PARTIES

Claimant, Everen Securities, Incorporated ("Everen"), was represented by Diane C. Fischer, Michael A. Kraft and Ronald P. Kane, Esquires of Gornberg Kane & Fischer, Limited, located in Chicago, Illinois.

Respondent, Allan R. Singleton ("Mr. Singleton"), was not represented in this matter.

CASE INFORMATION

Everen's Statement of Claim was filed on or about January 9, 1997.

Everen's Submission Agreement was signed on January 8, 1997.

The NASD Regulation, Incorporated Office of Dispute Resolution has no record of either a Statement of Answer or a Submission Agreement from Mr. Singleton.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on September 10, 1997 for one (1) session.

The hearing was held in Indianapolis, Indiana.

CASE SUMMARY

Everen brought this action against Mr. Singleton, a registered representative with Everen at all relevant times herein, to recover sums allegedly owed on a promissory note and as reimbursement for the settlement of a customer complaint.

According to Everen, Mr. Singleton was loaned the sum of \$20,000.00 by Everen pursuant to a promissory note (the "Note"), which was entered into on June 30, 1994. Everen asserted that under the terms of the Note: Mr. Singleton agreed to repay \$20,000.00 in one lump sum payment on July 10, 1998; on July 10, 1995, July 10, 1996, July 10, 1997, and July 10, 1998, Everen shall forgive $\frac{1}{4}$ of the principal balance due and owing under the Note, plus applicable interest, but only if Mr. Singleton has, at all times from the date of the Note, remained in the full-time employment of Everen; in the event Mr. Singleton's employment terminates for any reason during the terms of the Note, Everen may declare the remaining principal balance on the Note immediately due and payable; interest on the remaining principal balance will accrue at the rate of 9% from the date Mr. Singleton is no longer a full-time employee of Everen until such time as payment is received; and Mr. Singleton agreed that he would pay all costs and expenses, including attorneys' fees, incurred by Everen in connection with the enforcement of the Note. Everen alleged that upon Mr. Singleton's termination from Everen, which occurred on November 21, 1995, the remaining principal balance due and owing under the Note in the amount of \$15,000, plus interest in the amount of \$385.92, immediately became due and owing on that date. In addition, Everen alleged, interest at the rate of 9% has accrued from November 21, 1995 to January 8, 1997 in the amount of \$1,531.80. Everen maintains that since Mr. Singleton's termination from Everen, he has failed and has refused to honor his obligations to Everen.

Everen also asserted that Mr. Singleton is liable for effecting trading in an account he handled while employed at Everen that was inconsistent with the customers' investment objectives and risk tolerances. According to Everen, it entered into a settlement with these customers, which resulted in a loss to Everen of \$63,000.00. Everen alleged that Mr. Singleton has failed to honor his obligations to Everen in connection with the settlement. Everen stated that Mr. Singleton owed it a duty not to engage in conduct he knew, or should have known, would expose Everen to liability. Everen further stated that it is entitled to full indemnification from Mr. Singleton for all losses occasioned by these matters, or, in the alternative, if it is determined that the liability of Mr. Singleton is not primary, sole, and exclusive, then Everen is entitled to an award in its favor and against Mr. Singleton in such amount commensurate with his relative culpability.

RELIEF REQUESTED

Everen requested an award for: \$15,000.00 as the principal balance due and owing under the promissory note (the "Note"); \$385.92 as interest accrued during the term of the Note at the contract rate of 7%; \$1,531.80 as interest on the balance due and owing under the Note from the date of default, November 21, 1995, to January 8, 1997 at the contract rate of 9% per annum; interest on the balance due and owing under the Note at \$3.70 per day from January 8, 1997 to date of payment; and the costs of collection and of this proceeding including attorneys' fees as agreed to under the terms of the Note. Everen further requested an award with respect to the reimbursement for the customer claim for compensatory damages of \$63,000.00, plus interest thereon at the legal rate, the costs and expenses associated with this arbitration, and reasonable attorneys' fees incurred in collecting these monies.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of claimant, Everen Securities, Incorporated, the undersigned arbitrators have determined that respondent, Allan R. Singleton, has been properly served with the Statement of Claim pursuant to §§ 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that respondent, Allan R. Singleton, had received due notice of the hearing as required under § 10318 of the Code.

Respondent, Allan R. Singleton, did not file with NASD Regulation, Incorporated Office of Dispute Resolution a properly executed submission to arbitration, but is required to submit to arbitration pursuant to § 10301 of the Code and is 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, Incorporated Office of Dispute Resolution.

AWARD

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

1. Allan R. Singleton is liable for and shall pay Everen Securities, Incorporated compensatory damages of \$55,778.85;
2. 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 \$600 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there was one (1) hearing session x \$600 = \$600 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, Incorporated Office of Dispute Resolution shall retain the non-refundable filing fee of \$500 and shall retain as forum fees the hearing session deposit of \$600 previously deposited with the NASD Regulation, Incorporated Office of Dispute Resolution by Everen Securities, Incorporated.

Pursuant to § 10333 of the Code, the NASD Regulation, Incorporated Office of Dispute Resolution shall retain the non-refundable member surcharge of \$300 previously deposited with the NASD Regulation, Incorporated Office of Dispute Resolution by Everen Securities, Incorporated.

Allan R. Singleton is liable for and shall reimburse Everen Securities, Incorporated for its hearing session deposit of \$600.

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

Concurring Arbitrators' Signatures

/s/ John G. Deckard

September 30, 1997

John G. Deckard, Esquire
Chairperson
Public Arbitrator

Dated:

/s/ Jerome O. Pitt

October 7, 1997

Jerome O. Pitt
Panelist
Public Arbitrator

Dated:

/s/ Michael F. Fetsch

October 3, 1997

Michael F. Fetsch, CFP
Panelist
Industry Arbitrator

Dated:

For NASD use only:

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