

**AWARD**

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Dale R. Terwedo

Claimant

v.

Arbitration No.  
97-05698/97-05719

Lutheran Brotherhood Securities Corporation

Respondent

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Lutheran Brotherhood Securities Corporation

Claimant

v.

Dale R. Terwedo

Respondent

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**REPRESENTATION**

For Dale R. Terwedo: Scott D. Stechman, Esq., Smith Campbell & Paduano, New York, New York.

For Lutheran Brotherhood Securities Corporation: Fredrick D. Huebner, Esq., Cable, Langenbach, Kinerk & Bauer, LLP, Seattle Washington.

**CASE INFORMATION**

Dale Terwedo's Statement of Claim and Request for Interim and Permanent Injunction filed:  
December 5, 1997

Dale Terwedo's Submission Agreement signed: December 5, 1997

Dale Terwedo's Answer to Statement of Claim of Lutheran Brotherhood Securities Corporation  
filed: January 2, 1998

Lutheran Brotherhood Securities Corporation's Statement of Claim and Motion for Injunctive Relief  
filed: December 8, 1997

Lutheran Brotherhood Securities Corporation's Submission Agreement signed: December 8, 1997

Lutheran Brotherhood Securities Corporation's Answer and Memorandum in Opposition to  
Terwedo's Motion for Immediate Injunction filed: December 8, 1997

### **HEARING INFORMATION**

The injunctive relief hearing was held before arbitrator Peter J. Wunderlich in Seattle, Washington, as follows:

December 15, 1997	-	2 sessions
December 16, 1997	-	2 sessions

A telephone conference lasting one session was held on December 23, 1997.

The evidentiary hearing was held in Seattle, Washington, as follows:

January 5, 1998	-	2 sessions
January 6, 1998	-	2 sessions
January 7, 1998	-	2 sessions
January 8, 1998	-	2 sessions
January 9, 1998	-	2 sessions

### **CASE SUMMARY**

Dale Terwedo alleged that he is an independent businessman who runs a financial planning business and, until recently, paid Lutheran Brotherhood Securities Corporation (LBSC) to provide the clearing, back-office and compliance services of a broker-dealer as required by securities laws. Mr. Terwedo further stated that on August 30, 1997, he voluntarily terminated his association with LBSC, that LBSC now seeks to prohibit him from working with the clients he has developed over the years, that LBSC seeks to deny his clients their freedom to choose with whom they will conduct business. Mr. Terwedo further stated that he was not LBSC's employee, but an independent businessman, and asserted that LBSC has no protectable interest in the identities of the clients he developed at his own expense.

LBSC denied the allegations of Mr. Terwedo's claim, and asserted that Mr. Terwedo is merely a "stalking horse" for others who are planning an impending raid on LB and LBSC.

In its claim, LBSC alleged that when Mr. Terwedo began to work for it and its parent company, Lutheran Brotherhood (LB), in 1984, he had no prior experience in the insurance and securities business and had no book of customers, and by going to work with LB and LBSC, he obtained confidential information and training. LBSC further alleged that on July 26, 1992, Mr. Terwedo executed a "Registered Representative's Agreement" that was made effective as of March 19, 1984, in which Mr. Terwedo promised, during and after his LBSC employment, not to solicit LBSC investors to sell or replace their LB securities, that he agreed that all customer lists and printed materials relative to LBSC business are the confidential information and exclusive property of LBSC, and that he accepted a one-year non-compete agreement that would begin when his association with LBSC ended.

LBSC further alleged that Mr. Terwedo subsequently reaffirmed the terms of that agreement on May 2, 1994, when Mr. Terwedo signed a "Selected Registered Representative Agreement." The May 2, 1994 agreement intended to permit Mr. Terwedo to sell LBSC variable annuities and insurance products, but incorporated by reference the 1992 agreement and set out additional constraints concerning the use and confidentiality of customer lists, sales information, business records, etc.

LBSC alleged that prior to and after Mr. Terwedo's departure from LB and LBSC on August 28, 1997, he breached the terms of the signed agreements.

LBSC more specifically alleged breach of contract, breach of fiduciary duty, misappropriation of trade secrets, tortious interference with contractual relations, and violation of the Washington State Unfair Business Practices/Consumer Protection Act.

Mr. Terwedo denied all the allegations of wrongdoing set forth by LBSC, and asserted that LBSC had engaged in a deliberate, wrongful and actionable course of conduct designed to neutralize the possible competitive threat to its business activities in the metropolitan Seattle area, thereby preventing him from establishing himself in the financial services industry. Mr. Terwedo further stated that LBSC repeatedly made false and defamatory statements about him to LBSC field agents and his clients in an effort to discredit him. Mr. Terwedo also stated that LBSC had never previously attempted to enforce any of the restrictive covenants against other LBSC financial advisors, thus leading him to believe that no legal action would be taken against him or his clients.

### **RELIEF REQUESTED**

Mr. Terwedo requested interim and permanent injunctive relief which would convert any interim injunctive order granted in his favor into a permanent injunctive order and declare Mr. Terwedo not liable to LBSC in law or in equity in any respect as a result of the termination of his

employment with LBSC or regarding his present employment. He also requested that the panel declare any trainee or account executive agreement signed by Mr. Terwedo for the benefit of LBSC to be null and void.

LBSC requested a permanent injunction barring Mr. Terwedo from soliciting its customers until August 28, 1998, and an award of damages for Mr. Terwedo's breach of contract, breach of fiduciary duties and misappropriation of trade secrets. LBSC also requested double damages under the Trade Secrets Act and attorney's fees under the Consumer Protection Act.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On December 16, 1997, after the presentation of the parties' pleadings, evidence and oral arguments on the interim injunction issue, an Order granting an immediate interim injunction was granted in favor of LBSC and denied with respect to Mr. Terwedo.

The parties have agreed to receive conformed copies of the Award while the originals remain on file with NASDR, Inc.

### **AWARD**

After considering the pleadings, the testimony and 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. The injunction previously granted in favor of LBSC shall remain in force until August 28, 1998, excluding the parties and dependents listed on Stipulated Exhibit #1.
2. Dale R. Terwedo is liable for and shall pay to LBSC damages in the sum of \$87,310.00. No exemplary damages are awarded.
3. Dale R. Terwedo is liable for and shall pay to LBSC attorney's fees in the amount of \$35,384.00, pursuant to RCW 21.20.702, the Washington State Consumer Protection Act.
4. Dale R. Terwedo is to return immediately to LBSC all documents not previously returned per the interim injunctive Order.
5. All claims for relief asserted by Dale R. Terwedo are dismissed in their entirety.

### **FORUM FEES**

Pursuant to Section 10205 of the Code of Arbitration Procedure, the NASDR shall retain the parties' non-refundable filing fees, surcharges, and expedited hearing fees. Forum fees are assessed to the parties as follows:

**Total fees:**

1 pre-hearing conference @ \$300/session	\$ 300.00
14 hearing sessions @ \$600/session	\$ 8400.00
Total:	<u>\$ 8700.00</u>

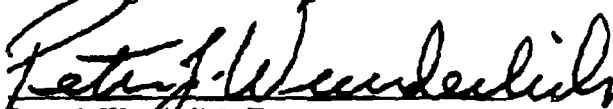
Dale R. Terwedo's one-half share:	\$ 4350.00
Credit for hearing session deposit:	<u>(\$ 600.00)</u>
Balance Due:	<u>\$ 3750.00</u>

LBSC's one-half share:	\$ 4350.00
Credit for hearing session deposit:	<u>(\$ 600.00)</u>
Balance Due:	<u>\$ 3750.00</u>

**Fees are payable to the National Association of Securities Dealers Regulation, Inc.**

**Concurring Arbitrators Signatures:**

**Date signed:**

  
Peter J. Wunderlich, Esq.  
Presiding Chairperson  
Public Arbitrator

1/29/98

\_\_\_\_\_  
James A. Vawter  
Public Arbitrator

\_\_\_\_\_  
Robert McCullough  
Securities Industry Arbitrator

Date served: 2/2/1998

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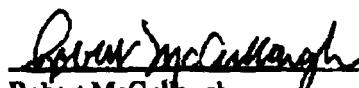
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1/29/98

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