

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Weiss, Peck & Greer, L.L.C., (Claimant) vs. Sherwood Securities Corp., (Respondent)

Case Number: 99-01368

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant Weiss, Peck & Greer, L.L.C., hereinafter referred to as "Claimant": David B. Tulchin, Esq., Sullivan & Cromwell, New York, NY. Previously represented by: Robert M. Abrahams, Esq., Schulte Roth & Zabel LLP, New York, NY.

Respondent Sherwood Securities Corp., hereinafter referred to as "Respondent": James M. Wines, Esq., Dickstein, Shapiro, Morin & Oshinsky LLP, Washington, DC.

CASE INFORMATION

Statement of Claim filed on or about: March 22, 1999.

Reply to Counterclaim filed by Claimant on or about: June 28, 1999.

Claimant signed the Uniform Submission Agreement: March 18, 1999.

Statement of Answer and Counterclaim filed by Respondent on or about: June 8, 1999.

Respondent signed the Uniform Submission Agreement: April 30, 1999.

CASE SUMMARY

Claimant asserted the following causes of action: acts and omissions in contravention of all standards of commercial reasonableness and the just and equitable principles of trade; acceptance of trades without regard for the nature, concentration, volatility, and size of the orders; violation of the high standards of commercial honor; negligence and recklessness; and violation of various NASD Rules, including NASD Rule 3370.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; Claimant's claims are barred in whole or in part by the economic loss doctrine; Claimant's claims are barred in whole or in part by the doctrines of unclean hands, estoppel, and in pari delicto; Claimant's claims are barred in whole or in part by the doctrine of ratification; Claimant's claims are barred in whole or in part by Carnegie, Childs & Co. LLC's ("Carnegie") wrongdoing or negligent conduct; Claimant's claims are barred in whole or in part by Claimant's own wrongdoing or negligent conduct and the doctrines of contributory and comparative negligence; Claimant is precluded from recovery because Respondent was not the proximate cause of the damages that Claimant allegedly suffered; Claimant's claims are barred in whole or in part because Claimant had knowledge of and assumed the risk with respect to the transactions for which they seek

recovery; Claimant's claims are barred in whole or in part by Claimant's failure to mitigate its alleged damages; Claimant is precluded from recovery because it would be unjustly enriched thereby; and the NASD Rules described in the Statement of Claim create no duties on the part of member firms to determine the appropriateness of trades executed on behalf of another broker or dealer.

In its Counterclaim, Respondent asserted the following causes of action: Claimant failed to fully perform its clearing obligations in accordance with applicable agreements, rules, regulations, and practices; breach of duty; and violation of the standards of commercial honor and the just and equitable principles of trade.

Unless specifically admitted in its Reply, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: Respondent fails to state a claim as there was no enforceable contract between Claimant and Carnegie as alleged; Respondent's claim is barred by virtue of section 8-319 of the New York State Uniform Commercial Code; Respondent's claims are barred by the doctrines of unclean hands, estoppel, and in pari delicto; Respondent's claims are barred by Respondent's wrongdoing, negligent conduct, contributory negligence, and comparative negligence; and Respondent's claims are barred because Respondent assumed the risk with respect to the transactions it entered into with Carnegie by failing to abide by standards of commercial reasonableness, equitable principles of trade, and industry practice with regard to the nature, concentration, volatility, and size of orders.

RELIEF REQUESTED

Claimant requested:

- a. Compensatory damages in the approximate amount of \$11,000,000.00, plus consequential damages and pre-award interest from January 9, 1999 at the legal rate;
- b. Costs and attorneys' fees in bringing this arbitration proceeding; and
- c. Such other and further relief as the Panel deems just and appropriate.

Respondent requested:

- a. Compensatory damages in the approximate amount of \$1,344,800.00, plus consequential damages and pre-award interest from January 9, 1999 at the legal rate;
- b. Costs and attorneys' fees; and
- c. Such other and further legal and/or equitable relief the Panel deems just and appropriate.

In its Reply, Claimant requested that the Counterclaim be dismissed in its entirety, and that Claimant be awarded its costs and attorneys' fees incurred in defending the Counterclaim.

OTHER ISSUES CONSIDERED AND 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.

AWARD

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

1. Claimant's claims are hereby dismissed in their entirety.
2. Respondent's Counterclaim is hereby dismissed in its entirety.
3. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 5,000.00
Counterclaim filing fee	= \$ 2,000.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Weiss, Peck & Greer, L.L.C. and Sherwood Securities Corp. are parties.

Weiss, Peck & Greer, L.L.C.

Member surcharge	= \$ 3,600.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 5,000.00

Sherwood Securities Corp.

Member surcharge	= \$ 3,600.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 5,000.00

Adjournment Fees

Adjournments requested during these proceedings:

Sept. 19, 20, 21, 26, 27 & 28, 2000, adjournment by both parties = WAIVED

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: May 30, 2000	1 session

One (1) Pre-hearing session with Panel x \$1,200.00	= \$ 1,200.00
Pre-hearing conference: February 24, 2000	1 session

Fourteen (14) Hearing sessions x \$1,200.00	= \$16,800.00
Hearing Dates:	
April 23, 2001	2 sessions
April 24, 2001	2 sessions
April 25, 2001	2 sessions

April 26, 2001	2 sessions
May 9, 2001	3 sessions
May 10, 2001	3 sessions

Total Forum Fees	= \$18,450.00
------------------	---------------

1. The Panel has assessed \$9,225.00 of the forum fees against Claimant.
2. The Panel has assessed \$9,225.00 of the forum fees against Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimant, requested Awards, \$70.00.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 5,000.00
Member Fees	= \$ 9,200.00
Forum Fees	= \$ 9,225.00
<u>Administrative Costs</u>	= \$ 70.00
Total Fees	= \$23,495.00
<u>Less payments</u>	= \$ 9,870.00
Balance Due NASD Dispute Resolution, Inc.	= \$13,625.00

2. Respondent be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 2,000.00
Member Fees	= \$ 9,200.00
<u>Forum Fees</u>	= \$ 9,225.00
Total Fees	= \$20,425.00
<u>Less payments</u>	= \$ 6,800.00
Balance Due NASD Dispute Resolution, Inc.	= \$13,625.00

All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Seth T. Taube, Esq.	-	Public Arbitrator, Presiding Chair
Stuart M. Schwartz, Esq.	-	Public Arbitrator
Matthew J. Tolan	-	Industry Arbitrator

Concurring Arbitrators' Signatures

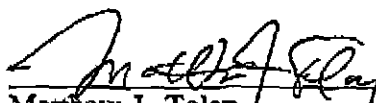
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Seth T. Taube, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Stuart M. Schwartz, Esq.
Public Arbitrator

Signature Date



Matthew J. Tolan
Industry Arbitrator

Signature Date

June 18, 2001
Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.

Arbitration No. 99-01368

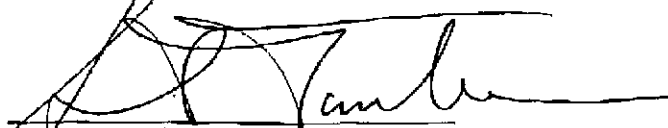
Award Page 8

ARBITRATION PANEL

Seth T. Taube, Esq.	-	Public Arbitrator, Presiding Chair
Stuart M. Schwartz, Esq.	-	Public Arbitrator
Matthew J. Tolan	-	Industry Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Seth T. Taube, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Stuart M. Schwartz, Esq.
Public Arbitrator

Signature Date

Matthew J. Tolan
Industry Arbitrator

Signature Date

June 18, 2001
Date of Service (For NASD office use only)

ARBITRATION PANEL

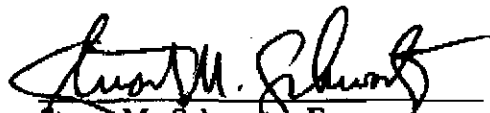
Seth T. Taube, Esq.	-	Public Arbitrator, Presiding Chair
Stuart M. Schwartz, Esq.	-	Public Arbitrator
Matthew J. Tolan	-	Industry Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Seth T. Taube, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Stuart M. Schwartz, Esq.
Public Arbitrator

6/18/01

Signature Date

Matthew J. Tolan
Industry Arbitrator

Signature Date

June 18, 2001
Date of Service (For NASD office use only)