

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Legacy Securities Corp.

Case No. 99-01370

Name of Respondent

Clear Communications Group, Inc.

REPRESENTATION OF PARTIES

For Claimant Legacy Securities Corp. ("Legacy"), hereinafter referred to as "Claimant": Michael J. King, Esq. and Robert E. Spears, Jr., Esq. of the law firm of Minkin & Snyder, P.C., Atlanta, Georgia.

For Respondent Clear Communications Group, Inc. ("Clear"), hereinafter referred to as "Respondent": Kirk W. Watkins, Esq. and Ana C. Davis, Esq. of the law firm of Womble, Carlyle, Sandridge & Rice, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: March 19, 1999.

Claimant signed the Uniform Submission Agreement: March 19, 1999.

Statement of Answer filed by Respondent on or about: June 7, 1999.

Respondent signed the Uniform Submission Agreement: June 1, 1999.

CASE SUMMARY

Claimant alleged the following: It sought recovery of a Two Hundred Eighty-Seven Thousand Dollar (\$287,000.00) fee from Clear for investment banking services that Legacy provided to Clear in 1997. Legacy and Clear entered into an agreement on April 22, 1997 (the "Agreement"), under which Legacy agreed to represent and advise Clear in private capital financing transactions. In return, Clear agreed to pay Legacy a one percent (1%) success fee ("Success Fee") upon the closing of any senior or secured financing transaction (a "Transaction") with any entity with which Legacy or Clear had a contact (a "Contact") during the term ("Term") of the Agreement. Clear's obligation to pay Legacy a Success Fee was triggered if Clear closed an equity or debt financing transaction within one year of the end of the Term of the Agreement.

During the Term of the Agreement, Legacy and Clear had Contacts with Wachovia Bank

N.A. ("Wachovia"), Fleet Capital Corporation and Fleet Equity Partners ("Fleet"). Specifically, in September of 1997, Legacy's investment bankers contacted Carol Longendorfer with Fleet to inquire about Clear obtaining a senior debt financing commitment from Fleet. At or about this same time officers of Clear contacted officers of Wachovia to inquire about a possible refinancing of Clear's line of credit.

The Term of the Letter Agreement expired in November of 1997, when Clear closed an equity financing Transaction with Demuth, Folger & Wetherill. Later that month Clear received a \$1.2 million loan commitment from Wachovia. In December of 1997, Clear closed a second loan for \$2.5 million with Wachovia. In April of 1998, Clear obtained a commitment for \$25 million of senior debt financing from Wachovia and Fleet Bank. In this commitment the Fleet affiliate agreed to provide Clear with up to \$15 million in senior debt financing and Wachovia agreed to provide \$10 million in senior debt financing.

In the summer of 1998, Legacy attempted to collect its Success Fee for these Transactions. Clear refused to pay it. Legacy now seeks a Success Fee of \$287,000.00, or 1% of the aggregate value of the debt financing which Wachovia and Fleet Bank committed to Clear during the one-year period after the Term of the Agreement.

Respondent alleged the following: Legacy performed its services and accordingly, the Agreement expired upon the closing of the Private Financing in November 1997. Clear relied on the language in the Agreement that provided that the term of the Agreement and Legacy's exclusive appointment expired upon the closing of any Transaction. At the November 1997 closing, Legacy was paid its full Success Fee in accordance with the terms of the Agreement. Clear further contended that, subsequent to the expiration of the Agreement, contacts were made by Clear and that Clear, without any assistance from Legacy, secured additional unrelated financing. As such, it is Clear's contention that Legacy is not entitled to a Success Fee related to this later secured financing.

RELIEF REQUESTED

Claimant requested that an arbitration award be granted against Clear and in favor of Legacy as follows:

- (a) for actual and general damages in the amount of \$287,000.00;
- (b) for Legacy's expenses of litigation, including attorneys' fees;
- (c) for pre-award interest at the rate of 1-1/2% per month from the date the principal indebtedness became due and payable; and,
- (d) for such relief as the arbitration panel deemed just.

Respondent requested that the claims of Legacy be found to be without merit in toto and dismissed with all costs of the arbitration cast upon Legacy and that Clear be granted such other and further relief as the arbitrators determined to be just and appropriate.

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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are denied in their entirety.

Each party shall bear their respective costs, including attorneys' fees.

All other requests for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:
Initial claim filing fee = \$1,000.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$2,500.00

Adjournment Fees

No adjournments were requested during these proceedings.

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: September 23, 1999	1 session
Four Hearing sessions x \$1,125.00	= <u>\$4,500.00</u>
Hearing Dates: December 13, 1999 2 sessions	
December 14, 1999 2 sessions	
Total Forum Fees	= \$5,625.00

The Panel has assessed \$2,812.50 of the forum fees to Claimant.
The Panel has assessed \$2,812.50 of the forum fees to 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.

Respondent requested additional copies of arbitrator awards at a cost of \$25.00.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$4,600.00
Forum Fees	= \$2,812.50
Total Fees	= \$8,412.50
<u>Less payments</u>	<u>= \$4,225.00</u>
Balance Due NASD Regulation, Inc.	= \$4,187.50

Respondent be and hereby is solely liable for:

Forum Fees	= \$2,812.50
Administrative Costs	= \$25.00
Total Fees	= \$2837.50
<u>Less payments</u>	<u>= \$25.00</u>
Balance Due NASD Regulation, Inc.	= \$2,812.50

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/s/
Jo Lanier Meeks, Esq.
Industry Arbitrator, Presiding Chair

Signature Date

/s/
Hugh O. Brock, III, Esq.
Public Arbitrator

Signature Date

/s/
V. Armand Colson
Public Arbitrator

Signature Date

January 3, 2000
Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

Jo Lanier Meeks
Jo Lanier Meeks, Esq.
Industry Arbitrator, Presiding Chair

12/30/99
Signature Date

Hugh O. Brock, III, Esq.
Public Arbitrator

Signature Date

V. Armand Colson
Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

Jo Lanier Meeks, Esq.
Industry Arbitrator, Presiding Chair

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Hugh O. Brock, III
Hugh O. Brock, III, Esq.
Public Arbitrator

12/29/99
Signature Date

V. Armand Colson
Public Arbitrator

Signature Date

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Jo Lanier Meeks, Esq.
Industry Arbitrator, Presiding Chair

Signature Date

Hugh O. Brock, III, Esq.
Public Arbitrator

Signature Date

V. Armand Colson
V. Armand Colson
Public Arbitrator

30 Dec., 1994
Signature Date

Date of Service (For NASD office use only)