

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Equable Securities Corporation v. Robert J. Milosch & Freedom Investors Corporation

Case Number: 99-1703

Hearing Site: Milwaukee, Wisconsin

REPRESENTATION OF PARTIES

Claimant, Equable Securities Corporation ("Equable"), hereinafter referred to as "Claimant":
Michael H. Schaalman, Esq., Quarles & Brady, Milwaukee, Wisconsin.

Respondent, Robert Joseph Milosch ("Milosch"): James W. Hammes, Esq., Cramer,
Multhauf & Hammes, Waukesha, Wisconsin.

Respondent, Freedom Investors Corporation ("Freedom"): Gregory G. Wille, Esq., Wille,
Gregory & Lundeen, Milwaukee, Wisconsin.

CASE INFORMATION

Statement of Claim filed on or about: April 8, 1999

Claimant signed the Uniform Submission Agreement: May 19, 1999

Statement of Answer filed by Respondent, Freedom, on or about: July 27, 1999

Respondent, Freedom, signed the Uniform Submission Agreement: July 16, 1999

Response to Statement of Claim and Counterclaim filed by Respondent, Milosch, on or
about: July 28, 1999

Equable's Reply to Milosch's Counterclaim filed on or about: September 2, 1999

Motion to Dismiss Milosch's Counterclaim filed on or about: November 30, 1999

Brief in Opposition to Claimant's Motion to Dismiss Milosch's Counterclaim filed on or
about: December 15, 1999

CASE SUMMARY

Claimant asserted a claim for damages arising out of the Respondent's breach of a covenant not to compete contained in employment contracts executed by the parties. Prior to the case being submitted to arbitration, proceedings were conducted in the Circuit Court of Waukesha County wherein the Court found the covenant not to compete to be enforceable and made additional rulings relating to the scope and extent of damages that the Claimant could assert.

The Respondent counterclaimed seeking commissions due of the Respondent for business written by the Respondent for the Claimant's companies prior to the termination of the employment contract. The Respondent had also sought to recover residual commissions due under the terms of the contract, but this claim was dismissed by the Circuit Court of Waukesha County prior to the Court referring the case to the NASD for arbitration.

Equable Securities Corp. is a securities brokerage firm and member of the NASD. Robert Milosch was employed by Equable as a sales representative until February 12, 1997, when

he resigned and became an independent registered representative of another brokerage firm, Freedom Investors Corp. Equable then brought an action in state court against Milosch, alone, alleging that he was doing business through Freedom Investors with customers he had serviced at Equable and seeking to enforce non-competition and non-disclosure covenants in Milosch's employment agreement. On May 21, 1997, Milosch was temporarily enjoined from doing business with such customers, and thereafter the injunction was made permanent and extended through August 12, 1998. After August 12, 1998, Equable sought a final judgment in state court awarding damages resulting from breach of the covenant, and Milosch counterclaimed for unpaid compensation to which he claimed to be entitled. On the motion of Milosch, the state court proceeding was then stayed and the damages issues referred to arbitration. In arbitration, Equable for the first time joined Freedom Investors as an additional defendant, claiming that it had intentionally interfered with the employment agreement between Milosch and Equable and induced Milosch to breach the non-competition covenant of that agreement. Equable sought an award against Milosch for damages suffered as a result of the alleged breach of the employment agreement and for actual costs and attorney fees incurred in enforcing the non-competition covenant as provided for in the contract. It also sought to have his counterclaim dismissed on the ground that all counterclaims had been dismissed in the state court action. Equable also sought an award against Freedom Investors for damages suffered as a result of its alleged interference with the employment contract.

Milosch defended on the ground that damages were recoverable only with respect to business done with customers formerly served at Equable during the period from February 12 until the temporary injunction was entered and he ceased doing business with such customers for the balance of the period of restraint. He also claimed there should be no award of attorneys fees incurred after he had made a statutory offer of settlement in the state court proceeding, that residual commissions forfeited under the employment agreement should be taken into account in determining any damages suffered by Equable, and that commissions earned prior to the date of termination remained due and payable in the amount of approximately \$14,000.

Freedom Investors denied all liability for intentional interference with the Milosch employment agreement. It alleged the following: that it did not interfere with the employment contract between Milosch and Equable or induce Milosch to breach that agreement by soliciting and doing business with Equable customers; that Milosch had independently determined to leave Equable before ever approaching Freedom Investors; that prior to contracting with Freedom Investors, Milosch neither gave Freedom Investors a copy of his employment agreement with Equable nor advised of the existence of any such employment agreement purporting to restrict Milosch's post-termination activities; that Freedom Investors had no financial stake in whether customers previously served by Milosch at Equable followed him to Freedom Investors because under the independent contractor arrangement entered into between Freedom Investors and Milosch, Milosch was responsible for all his own expenses and retained 100% of the commissions generated on business he executed while paying Freedom Investors a flat monthly fee and minimal ticket charge to cover the costs of processing business originated by Milosch, and that Freedom Investors had no involvement in Milosch's solicitation of customers he developed and served at Equable. Freedom Investors also asserted that any lost profits suffered by Equable were entirely speculative and the result of its own delay in seeking

injunctive relief, that the claim for damages should be dismissed as a sanction for Equable's failure to have commenced an arbitration simultaneously with the filing of its state court action pursuant to Rule 10335, and that Equable had already obtained all the relief to which it was entitled. Freedom Investors asked for an award dismissing the claim of intentional interference with contract against it and requiring that Equable pay not only the costs of the proceeding but reimburse Freedom Investors for all legal expense, including reasonable attorney's fees, incurred by it in being required to defend against a frivolously merit less claim.

RELIEF REQUESTED

Claimant requested: judgment against Respondent Milosch for unspecified money damages for breach of employment agreement; unspecified actual costs of enforcing the employment agreement including actual attorney fees as provided for in section 7.2 of the employment agreement; judgment against Freedom in an unspecified amount of damages; any other relief; dismissal of the Counterclaim.

Respondent Milosch requested: judgment against the Claimant on its Counterclaim for unspecified commissions owing, plus penalties or assessments which may be imposed pursuant to the provisions of Wis. Stats. Ch. 109, plus all costs, including reasonable and actual attorneys fees incurred in pursuing the Counterclaim

Respondent Freedom requested: an award dismissing the claim and requiring Claimant to pay all costs and forum fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent, Robert J. Milosch, did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

The Panel denied Equable's Motion to Dismiss Milosch's Counterclaim

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent Robert J. Milosch is solely liable for and shall pay to Claimant Equable Securities Corp. the sum of \$74,927.15, in compensatory damages;
 - a.) The amount noted in Paragraph #1 above takes into account the following rulings:
 - 1.) Respondent Robert J. Milosch is solely liable for and shall pay

to Claimant Equable Securities Corp. the sum of \$83,814.00, in compensatory damages;

- 2.) Claimant Equable Securities Corp. Is solely liable for and shall pay to Respondent/Counter-Claimant Robert J. Milosch \$8,886.85 in damages on the Counterclaim;
- 2.) Respondent Robert J. Milosch is solely liable for and shall pay to Claimant Equable Securities Corp. \$60,000.00 in attorneys' fees per contract;
- 3.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 4.) That any relief not specifically enumerated, including punitive damages is hereby denied with prejudice.

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	= \$500.00
Counter claim filing fee	= \$125.00

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 firms are parties.

Member surcharge	= \$1,200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,000.00

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:

Two (2) Pre-hearing sessions with Panel x \$1,000.00 = \$ 2,000.00

Pre-hearing conferences:	November 10, 1999	1 session
	January 10, 2000	1 session

Ten (10) Hearing sessions x \$1,000.00 = \$10,000.00

Hearing Dates:	February 23, 2000	2 sessions
	February 24, 2000	2 sessions
	February 25, 2000	2 sessions
	March 1, 2000	2 sessions
	March 21, 2000	2 sessions

Total Forum Fees = \$12,000.00

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration # 99-1703
Award Page 5 of 5

The Panel has assessed \$4,000.00 of the forum fees to Equable Securities Corp.
The Panel has assessed \$4,000.00 of the forum fees to Robert J. Milosch.
The Panel has assessed \$4,000.00 of the forum fees to Freedom Investor Corporation.

Fee Summary

Claimant, Equable Securities Corp., be and hereby is solely liable for:

Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 3,800.00
Forum Fees	= \$ 4,000.00
Total Fees	= \$ 8,300.00
Less payments	= \$ 2,700.00
Balance Due NASD Regulation, Inc.	= \$ 5,600.00

Respondent, Robert J. Milosch, be and hereby is solely liable for:

Type Filing Fee	= \$ 125.00
Forum Fees	= \$ 4,000.00
Total Fees	= \$ 4,125.00
Less payments	= \$ 575.00
Balance Due NASD Regulation, Inc.	= \$ 3,550.00

Respondent, Freedom Investor Corporation, be and hereby is solely liable for:

Member Fees	= \$ 3,800.00
Forum Fees	= \$ 4,000.00
Total Fees	= \$ 7,800.00
Less payments	= \$ 1,800.00
Balance Due NASD Regulation, Inc.	= \$ 6,000.00

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signature(s)


Herbert S. Bratt
Public Arbitrator, Presiding Chair

April 13, 2000
Signature Date

Frances O. Beach
Public Arbitrator

Signature Date

Ramona V. Larson
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

Felicia Fox

312-236-9239

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration # 99-1703
Award Page 5 of 5

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Claimant, Equable Securities Corp., be and hereby is solely liable for:

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Member Fees	= \$ 3,800.00
<u>Forum Fees</u>	<u>= \$ 4,000.00</u>
Total Fees	= \$ 8,300.00
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Concurring Arbitrators' Signature(s)

Herbert S. Bratt
Public Arbitrator, Presiding Chair

Frances O. Beach

Frances O. Beach
Public Arbitrator

Signature Date

Apr. 27, 2000

Signature Date

Ramona V. Larson
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Herbert S. Bratt
Public Arbitrator, Presiding Chair

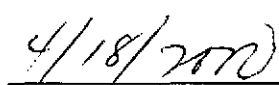
Signature Date

Frances O. Beach
Public Arbitrator

Signature Date



Ramona V. Larson
Industry Arbitrator



Signature Date

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