

AWARD
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Redwing Robin Limited Partnership

vs.

CASE 99-02504

Name of Respondents

Southern Financial Group, Inc.
Barton Clay Mercer

REPRESENTATION

Claimant, Redwing Robin Limited Partnership, hereinafter referred to as "Claimant": William S. Watts, Springfield, Virginia

Respondent, Southern Financial Group, Inc. ("Southern"): Russell L. Forkey, Esq., Fort Lauderdale, Florida

Respondent, Barton Clay Mercer ("Mercer"): Michael Schwartzberg, Esq., Winget, Spadafora & Schwartzberg, New York, New York

CASE INFORMATION

Statement of Claim filed on or about: June 1, 1999

Claimant signed the Uniform Submission Agreement: May 26, 1999

Statement of Answer filed by Respondent Southern on or about: September 10, 1999

Respondent Southern signed the Uniform Submission Agreement: July 20, 1999

Statement of Answer filed by Respondent Mercer on or about: April 12, 2000

Respondent Mercer did not execute an agreement to arbitrate.

CASE SUMMARY

Claimant alleged that Respondent Mercer, employed as an account executive with Respondent Southern, failed to follow Claimant's instructions to liquidate Dell Computer Options and Yahoo, Inc. options on October 12, 1998. Claimant further alleged that he reiterated the instructions on October 13, 1998 and again on October 14, 1998, but Respondent Mercer failed to follow Claimant's instructions. Claimant asserted that the options expired on October 17, 1998 causing Claimant to lose its entire investment.

Unless specifically admitted in its Answer, Respondent Southern denied the allegations made in the Statement of Claim and asserted the following defenses: assumption of risk; ratification of

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transactions; Southern acted with due diligence and in good faith, and Claimant is not entitled to recover damages which were due to conditions or events beyond the control of Southern.

Respondent Mercer vigorously denied that he failed to honor Claimant's alleged instruction to sell the put options in question, and submits that there is substantial contemporaneous evidence that flatly contradicts Claimant's allegations. First, Claimant never raised a grievance at the time regarding the transactions in question. Indeed, to the contrary, during this very same period of time Claimant filed several written complaints with Southern's Director of Compliance regarding various other things, such as Southern's faulty computer systems and the like. Significantly, however, Claimant makes no mention whatsoever in any of these letters of Respondent Mercer or the options in question. Thus, if Claimant truly believed Respondents failed to honor its instructions, Claimant plainly had the wherewithal and opportunity to raise a grievance at the time. Claimant's failure to mention Respondent Mercer or the transactions in question in the context of these contemporaneous letters flatly contradicts the unsupported allegations belatedly raised in the Statement of Claim.

Respondent Mercer maintained that moreover, the evidence clearly demonstrates that Claimant, through its sole principal, William (a/k/a "Mike") Watts, was a knowledgeable and avid investor with substantial prior investment experience with options. Claimant thus fully understood the substantial risks associated with such securities, including the possibility of complete loss of the investment. In fact, Mr. Watts had previously allowed options he owned to expire worthless, as he did here. Therefore, Claimant's prior trading history is consistent with his decision to simply let the options here expire worthless.

Finally, Respondent Mercer notes that Claimant's claim for damages asserted in this matter is wholly unrealistic and actually highlights the bad faith with which claimant has commenced this proceeding. Specifically, Claimant alleges that it is entitled to "damages" of \$24,000, the full purchase price of the options in question. However, there is no dispute regarding the purchase of the options. Rather, Claimant merely alleges that on October 12, 1998 he allegedly instructed Respondent Mercer to sell the options. Significantly, there is no question that on that date the prices of those options had dropped substantially due to the direction of the market, and were worth approximately \$5,000, only a fraction of the price that Claimant originally paid for them. Thus, under any set of circumstances Claimant would not be entitled to \$24,000, but merely what he could have sold them for on October 12th if he gave the direction to do so. Moreover, the diminution in the price of the options as of October 12th is entirely consistent with Respondent Mercer's position in this matter that Claimant chose not to sell the options because they already had dropped in value to the point that the risk-reward analysis favored holding the options in the hopes that the market had more upside potential than downside at that stage.

Respondent Mercer contends the contemporaneous evidence flatly contradicts the allegations asserted by Claimant. Accordingly, Respondent Mercer asks that the claim filed in this matter be: (i) dismissed in its entirety, and (ii) expunged from his otherwise clean regulatory record in the securities industry. Moreover, because the allegations in this matter so clearly contradict Claimant's actions during the relevant period and the actual prices of the securities at issue, Respondent Mercer believes Claimant has filed this arbitration in a belated bad faith attempt to extort from Respondents some of the losses based on Claimant's own investment decisions.



Respondent Mercer believes Claimant's actions should not be countenanced, especially since he, as an individual, has had to incur the substantial burden and expense of hiring counsel to defend this frivolous proceeding in a different state. Accordingly, in addition to the above relief, Respondent Mercer asks that he be awarded his reasonable costs and attorney's fees associated with having to defend this frivolous proceeding, and to have the forum fees imposed entirely upon the Claimant.

RELIEF REQUESTED

Claimant requested (as amended at the time of hearing):

Compensatory Damages	\$6,023.00
Attorneys' Fees	\$3,862.73
Other Costs	\$ 600.00

Respondent Southern requested that the claims asserted be dismissed, that they be awarded \$5,545.41 in legal fees and expenses, and that all costs and forum fees be assessed to Claimant.

Respondent Mercer requested that the claims asserted be dismissed, that they be awarded \$15,977.54 in legal fees and expenses, and that all costs and forum fees be assessed to Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Mercer 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(are) bound by the determination of the Arbitrator 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.

The Arbitrator considered Respondents' Motion to Dismiss at the end of Claimant's case, and Claimant's Response thereto, and denied the Motion.

The Arbitrator considered Respondent Mercer's Motion for a Determination that William M. Watts was a General Partner of Redwing RLP and must be jointly and severally liable and responsible with Redwing RLP, and Claimant's Response thereto, and granted the Motion. The Arbitrator determined that William Watts, although he claimed to be a paid independent contractor consultant, completely controlled Claimant limited partnership and used the entity personally to trade in the market. The Arbitrator further found that William Watts was the actual or *de facto* General Partner and owner of Redwing RLP, and jointly and severally responsible for any liability attributable to Claimant.

The Arbitrator considered Respondent Mercer's Motion to Expunge all references from Mercer's records maintained by the NASD Central Registration Depository ("CRD") based on the frivolous and defamatory nature of the claims, and granted the Motion.

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The Arbitrator considered the Respondents' Motion for attorneys' fees and costs if the Arbitrator found against Claimant, and granted the Motion. All post-hearing submissions detailing the bill of costs and fees must be submitted to the NASD no later than Friday, May 26, 2000 for consideration by the Arbitrator.

AWARD

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

1. That Claimant's claims are denied in their entirety; and
2. That Claimant is liable to and shall pay to Respondent Mercer \$15,000.00 for attorney's fees and legal expenses incurred as a result of the frivolous and defamatory nature of the claim; and
3. That the Arbitrator recommends the expungement of all reference to the above captioned arbitration from Respondent Barton Mercer's registration records (CRD #3038411), maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Mercer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
4. That each party shall bear their own costs and expenses, with the exception of the attorney's fees noted above and the forum fees specified below; and
5. That any and all relief not specifically addressed herein is 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	= \$150.00
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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 event giving rise to the dispute. In this matter, the member firm is a party.

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

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Forum Fees and Assessments

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

1 Pre-hearing session with a single arbitrator x \$450.00	= \$450.00
Pre-hearing conference: February 29, 2000 1 session	
2 Hearing sessions x \$450.00	= \$900.00
Hearing Date: May 16, 2000 2 sessions	
Total Forum Fees	= \$1,350.00

The Arbitrator assessed \$1,350.00 of the forum fees to Claimant.

Fee Summary

1. Claimant be and hereby is solely liable for:	
Initial Filing Fee	= \$150.00
Forum Fees	= <u>\$1,350.00</u>
Total Fees	= \$1,500.00
Less payments	= <u>\$600.00</u>
Balance Due NASD Regulation, Inc.	= \$900.00
2. Respondent, Southern, be and hereby is solely liable for:	
Member Fees	= \$2,200.00
Total Fees	= \$2,200.00
Less payments	= \$2,200.00
Balance Due NASD Regulation, Inc.	= \$ --0--

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

PB

ARBITRATOR'S SIGNATURE



Paul Davis Pearlstein, Esq.
Public Arbitrator, Presiding Chair

June 6, 2000
Signature Date

June 12, 2000
Date of Service (For NASD office use only)

