

**Award
NASD**

In the Matter of the Arbitration Between:

Name of the Claimant
Bernard H. Butts

Case Number: 99-03281
Consolidated with 99-03887

Names of the Respondents
Birchtree Financial Services, Inc.
David C. Wilson

Hearing Site: Boca Raton, FL

In the Matter of the Arbitration Between:

Name of the Claimant
Birchtree Financial Services, Inc.

Case Number: 99-03887
Consolidated with 99-03281

Name of the Respondent
Bernard H. Butts

Hearing Site: Boca Raton, FL

REPRESENTATION OF PARTIES

Bernard H. Butts, hereinafter referred to as "Claimant", appeared pro se.

For Birchtree Financial Services, Inc. ("Birchtree") and David C. Wilson ("Wilson"), hereinafter collectively referred to as "Respondents": Anthony J. Durone, Esq., Berkowitz, Feldmiller, Stanton, Brandt, Williams & Stueve, LLP, Kansas City, MO.

CASE INFORMATION

Claimant's Statement of Claim filed on or about: July 19, 1999.

Claimant signed the Uniform Submission Agreement: July 14, 1999.

Claimant signed the Uniform Submission Agreement: October 28, 1999.

Claimant's Answer and Affirmative Defenses to [Respondent Birchtree's] Statement of Claim and Counterclaim filed on or about: November 1, 1999.

Statement of Claim filed by Respondent Birchtree on or about: August 24, 1999.

Respondent Birchtree's Reply to Claimant's Counterclaim ("Reply") filed on or about: November 15, 1999.

Respondent Birchtree signed the Uniform Submission Agreement: August 16, 1999.

Respondent Wilson did not file an executed Uniform Submission Agreement.

Claimant's Motion to Consolidate Claims filed on or about: November 1, 1999.

Respondent Birchtree's Response to Claimant's Motion to Consolidate filed on or about: December 6, 1999.

Respondents Birchtree and Wilson's Motion to Consolidate and Answer filed on or about: November 9, 1999.

Claimant's Response to Respondents' Motion to Consolidate filed on or about: November 23, 1999.

Respondent Birchtree's Motion for Summary Judgment filed on or about: January 18, 2002.

CASE SUMMARY

In his Statement of Claim and Counterclaim, Claimant asserted the following causes of action: breach of fiduciary duty; negligence; negligent supervision; violation of section 10(b) of the Exchange Act, 15 U.S.C. section 78(j), Rule 10(b)(5) and Florida Statutes section 517.301; and, violation of the Rules of Fair Practice of the NASD. The causes of action relate to the purchase of Evans Systems, Inc. stock in Claimant's account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in Claimant's Statement of Claim and asserted various affirmative defenses including: failure to state a claim upon which relief can be granted; ratification; and, waiver.

Unless specifically admitted in its Reply to Claimant's Counterclaim, Respondent Birchtree denied the allegations made in Claimant's Counterclaim and asserted various affirmative defenses including: failure to state a claim upon which relief can be granted; ratification; and, waiver.

In its Statement of Claim, Respondent Birchtree asserted the causes of action of breach of contract and fraud in its Statement of Claim. The causes of action relate to the margin debt in Claimant's account.

Unless specifically admitted in his Answer, Claimant denied the allegations made in Respondent Birchtree's Statement of Claim and asserted various affirmative defenses including: a significant portion of the purchases in Claimant's account were unauthorized; unclean hands; and, set off.

RELIEF REQUESTED

Claimant requested compensatory damages of \$650,000.00, disgorgement of commissions, punitive damages, attorneys' fees, costs, expert fees, dismissal of Respondent Birchtree's Statement of Claim and such other and further relief as the undersigned arbitrators (the "Panel") deemed appropriate. In his Counterclaim, Claimant requested damages similar to the foregoing against Respondent Birchtree only.

Respondent Birchtree requested compensatory damages of \$760,926.40 plus interest, attorneys' fees of \$25,000.00, costs of \$2,450.00, dismissal of Claimant's Statement of Claim and Counterclaim, and such other and further relief as the Panel deemed just and proper.

Respondent Wilson requested dismissal of Claimant's Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

On or about March 9, 2000, the Panel issued an order which granted the parties' motions to consolidate.

Respondent Wilson did not file with NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (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 parties have agreed that the Award in this matter may be executed in counterpart copies.

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 is liable and shall pay to Respondent Birchtree compensatory damages in the sum of \$876,489.58 inclusive of pre-judgment interest.

Claimant's Statement of Claim and Counterclaim are dismissed, with prejudice.

Claimant's claims against Respondents Birchtree and Wilson are dismissed, with prejudice.

Any and all relief not specifically addressed herein, including Claimant's request for punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

| | |
|---|--------------|
| Claimant's Initial claim Filing Fee | = \$375.00 |
| Respondent Birchtree's Initial claim Filing Fee | = \$1,250.00 |
| Claimant's Counterclaim Filing Fee | = \$375.00 |

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 (99-03281) | = \$2,000.00 |
| Pre-hearing process fee | = \$600.00 |
| Hearing process fee | = \$3,500.00 |
| Member surcharge (99-03887) | = \$2,000.00 |

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

| | |
|--|--------------|
| September 18-21, 2000, adjournment by Claimant | = \$1,200.00 |
| May 2-4, 2001, adjournment by Respondents Birchtree and Wilson | = \$1,200.00 |
| February 4-6, 2002, adjournment by Claimant | = \$1,500.00 |

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 @ \$1,200.00 | = \$2,400.00 |
| Pre-hearing conferences: March 10, 2000 | 1 session |
| March 15, 2001 | 1 session |

| | |
|---|--------------|
| Three (3) Hearing sessions @ \$1,200.00 | = \$3,600.00 |
| Hearing Dates: June 11, 2002 | 2 sessions |
| June 12, 2002 | 1 session |

| | |
|------------------|--------------|
| Total Forum Fees | = \$6,000.00 |
|------------------|--------------|

The Panel has assessed the total forum fees of \$6,000.00 to Respondent Birchtree.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

| | |
|--|-----------|
| Respondent Birchtree requested additional copies of arbitrator awards beyond those provided without charge | = \$20.00 |
|--|-----------|

FEE SUMMARY

| | |
|--------------------------------|------------|
| Claimant is solely liable for: | |
| Initial claim Filing Fee | = \$375.00 |
| Counterclaim Filing Fee | = \$375.00 |

Adjournment Fees = \$2,700.00

Total Fees = \$3,450.00

Less payments = \$3,418.75

Balance Due NASD = \$31.25

Respondent Birchtree is solely liable for:

Filing Fee = \$1,250.00

Member Fees = \$8,100.00

Forum Fees = \$6,000.00

Administrative Costs = \$20.00

Total Fees = \$15,370.00

Less payments = \$11,058.75

Balance Due NASD = \$4,311.25

Respondents Birchtree and Wilson are jointly and severally liable for:

Adjournment Fee = \$1,200.00

Total Fees = \$1,200.00

Less payments = \$1,125.00

Balance Due NASD = \$75.00

All balances are payable to NASD and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Jenifer Y. Pfleger, Esq. - Public Arbitrator, Presiding Chair

Elena G. Rodriguez - Public Arbitrator

James C. Devine - Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

Jenifer Y. Pfleger, Esq.
Public Arbitrator, Presiding Chair

Signature Date

/s/

Elena G. Rodriguez
Public Arbitrator

Signature Date

/s/

James C. Devine
Non-Public Arbitrator

Signature Date

July 24, 2002

Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 99-03281
Award Page 5

Adjournment Fees = \$2,700.00

Total Fees = \$3,450.00

Less payments = \$3,418.75

Balance Due NASD = \$31.25

Respondent Birchtree is solely liable for:

Filing Fee = \$1,250.00

Member Fees = \$8,100.00

Forum Fees = \$6,000.00

Administrative Costs = \$20.00

Total Fees = \$15,370.00

Less payments = \$11,058.75

Balance Due NASD = \$4,311.25

Respondents Birchtree and Wilson are jointly and severally liable for:

Adjournment Fee = \$1,200.00

Total Fees = \$1,200.00

Less payments = \$1,125.00

Balance Due NASD = \$75.00

All balances are payable to NASD and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Jenifer Y. Pfleger, Esq.

Public Arbitrator, Presiding Chair


Elena G. Rodriguez

Public Arbitrator

James C. Devine

Non-Public Arbitrator

Concurring Arbitrators' Signatures


Jenifer Y. Pfleger, Esq.
Public Arbitrator, Presiding Chair

7-24-02
Signature Date

NASD Dispute Resolution
Arbitration No. 99-03281
Award Page 6

Elena G. Rodriguez
Elena G. Rodriguez
Public Arbitrator

7/22/2002
Signature Date

James C. Devine
James C. Devine
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 99-03281
Award Page 6

Elena G. Rodriguez
Public Arbitrator

Signature Date

James C. Devine
James C. Devine
Non-Public Arbitrator

7/23/02
Signature Date

Date of Service (For NASD office use only)