

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Janney Montgomery Scott LLC (Claimant) vs. Gary R. Gross, (Respondent) and
Janney Montgomery Scott LLC (Claimant) vs. John M. Mulvihill (Respondent)

Case Number: 99-04278; consolidated with 99-04279

Hearing Site: Philadelphia, Pennsylvania

REPRESENTATION OF PARTIES

Claimant, Janney Montgomery Scott LLC ("Janney"): Richard A. Purkiss, Senior Vice President, Janney Montgomery Scott LLC, Philadelphia, PA.

Respondent, Gary R. Gross ("Gross") and John M. Mulvihill ("Mulvihill"), hereinafter collectively referred to as "Respondents": James A. Vollins, Vice President and Associate Counsel, First Union Corporation, Charlotte, NC.

CASE INFORMATION

Statement of Claim filed in Arbitration Number 99-4278 on or about: September 16, 1999.

Janney signed the Uniform Submission Agreement: September 15, 1999.

Statement of Answer filed by Respondent Gross, on or about: May 2, 1999.

Respondent Gross did not file a Uniform Submission Agreement.

Statement of Claim filed in Arbitration Number 99-4279 on or about: September 16, 1999.

Statement of Answer filed by Respondent Mulvihill, on or about: May 1, 1999.

Respondent Mulvihill did not file a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action against Respondent Gross: misappropriation of a company-bought computer and the wrongful sale of a client's stock. Claimant asserted the following cause of action against Respondent Mulvihill: misappropriation of a company-bought computer.

Unless specifically admitted in the Answers filed, Respondents Gross and Mulvihill denied the allegations made in the Statement of Claim.

Respondent Gross asserted the following Counterclaim against Claimant: that Claimant wrongfully withheld Respondent Gross' final paycheck.

RELIEF REQUESTED

Claimant requested in its pleading as against Respondent Gross compensatory damages in the amount of \$2,596.95 as reimbursement for the computer, \$5,900 for the trade error, and \$957.29 for the cost of the trade error; \$750.00 for the filing fees associated with this litigation; less a credit of \$875.00, for a total of \$9,330.24.

Respondent Gross requested in his pleading that Claimant's claim be denied, and that all fees, costs and expenses he incurred related to this Arbitration be paid by Claimant. Respondent Gross asserted a counterclaim and requested as against Claimant compensatory damages in the amount of \$874.00, plus treble damages in the amount of \$2,622.00

Claimant requested as against Respondent Mulvihill compensatory damages in the amount of \$4,265.98 as reimbursement for the computer and \$525.00 for the filing fees associated with this litigation.

Respondent Mulvihill requested in his pleading that Claimant's claim be denied, and that all fees, costs and expenses he incurred related to this Arbitration be paid by Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

Arbitration Numbers 99-4278 (Janney Montgomery Scott LLC vs. Gary R. Gross) and 99-4279 (Janney Montgomery Scott LLC vs. John M. Mulvihill) were consolidated for hearing.

Claimant made a Motion to Dismiss Respondent Gross' Counterclaim, which was denied.

Respondents Gross and Mulvihill did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

AWARD

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

1. the Claimant's demand for Respondent Mulvihill to reimburse Claimant for a computer he had obtained through an expense report is denied. All related fees for filing this claim are to be paid by Claimant. The evidence presented was insufficient to persuade the Arbitrator that any communication between the parties, concerning the purchase of the computer, was adequate enough to make Respondent Mulvihill believe that the purchase of a company computer was other than a bonus or benefit;

2. that on Claimant's claim concerning a trade error caused by Respondent Gross, testimony established that at Janney Montgomery Scott LLC, similar errors might normally be shared between the company and the agent. The Arbitrator finds that due to conflicting testimony on the cause of the error, Respondent Gross is liable and shall pay to Claimant the sum of \$2,950.00 as payment for one-half of the trade loss error;
3. - on the Respondent Gross' Counterclaim, the Arbitrator awards Respondent Gross \$875.00 for wages due at the time of his termination, plus 10% interest on this amount, compounded monthly from the date the wages were due until the date that the wages are paid. Furthermore, Claimant will pay all fees attached to the filing of this Counterclaim. The amount to be paid by Janney Montgomery Scott LLC for Gross' filing fee is \$50 and is reflected in the fee section below. It appears to this Arbitrator that, under Pennsylvania Law, 43 P S 260.1 et seq., that Claimant had a duty to pay Respondent Gross his earned wages at the time they were due. Any attempt to offset alleged compensatory damages with earned wages was totally unwarranted and illegal;
4. Respondent Gross' request for treble damages is denied in its entirety;
5. that Claimant's claims against Respondent Mulvihill in Case 99-4279 are denied in their entirety;
6. that the parties shall bear their own costs and expenses except as fees are assessed below;
7. that any and all relief requests not specifically addressed are denied in their entirety.

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 for Arbitration Number 99-04278	= \$500
Initial claim filing fee for Arbitration Number 99-04279	= \$400
Counter claim filing fee for Arbitration Number 99-04278	= \$50

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firm is Claimant Janney.

Member surcharge in Arbitration Number 99-02478 = \$300
Member surcharge in Arbitration Number 99-02479 = \$200

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:

Two (2) Pre-hearing sessions with a single arbitrator x \$450 = \$900
Pre-hearing conference: Date September 6, 2000 1 session
 September 13, 2000 1 session

Two (2) Hearing sessions x \$450 = \$900
Hearing Date: November 8, 2000 2 sessions

Total Forum Fees = \$1,800

The Arbitrator has assessed the forum fees as follows:

1. The Arbitrator has assessed forum fees in the amount of \$1,350 to Claimant Janney Montgomery Scott LLC;
2. The Arbitrator has assessed forum fees in the amount of \$450 to Respondent Gross

Fee Summary

For Arbitration Number 99-04278, Claimant, Janney Montgomery Scott LLC, is assessed the following fees:

Initial Filing Fee	= \$ 500
Member Fees	= \$ 300
Forum Fees	= \$1,350
*Fees assessed to Janney for Gross' Counterclaim	= \$ 50
Total Fees	= \$2,200
<u>Less payments</u>	<u>= \$1,050</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,150

*See below

Respondent Gross is assessed the following fee:

Forum Fee = \$ 450

For Arbitration Number 99-04279, Claimant, Janney Montgomery Scott LLC, is assessed the following fees:

Initial Filing Fee	= \$ 400
Member Fees	= \$ 200
Total Fees	= \$ 600
<u>Less payments</u>	<u>= \$ 725</u>
Credit balance on Case 99-4279	= (\$125)

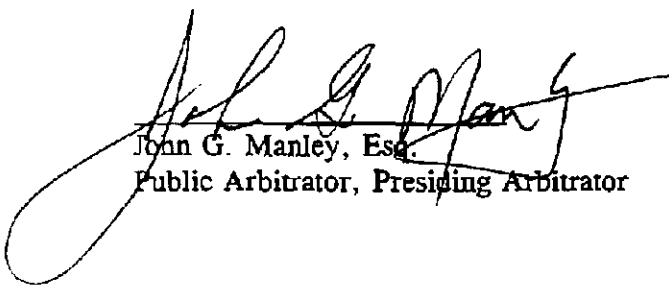
Claimant's credit balance in Case 99-4279 will be applied to its Balance due on case 99-4278 so that the Balance Due by Claimant in 99-4278 is \$425

Respondent Gross' fees for his Counterclaim as to Janney are as follows:

Filing Fee	= \$ 50
Total Fees	= \$ 50
- <u>Less payments</u>	= <u>\$ 0</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 50

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

Arbitrators' Signature


John G. Manley, Esq.
Public Arbitrator, Presiding Arbitrator

12-14-00
Signature Date

Date of Service (For NASD-DR office use only)