

10/27/02

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Jan Poort, (Claimant) vs. West America Securities Corp., Robert B. Kay, Gregory R. Myers, and Charles J. Newman, (Respondents)

Case Number: 99-00665

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimant Jan Poort, hereinafter referred to as "Claimant": Howard M. Rosenfield, Esq., a sole practitioner, Avon, CT.

Respondents West America Securities Corp. ("West America"), Robert B. Kay ("Kay"), and Gregory R. Myers ("Myers"): H. Thomas Fehn, Esq., Fields, Fehn & Sherwin, Los Angeles, CA.

Respondent Charles J. Newman ("Newman"): James A. Bush, Esq., Law Offices of James Bush, P.C., Cardiff By The Sea, CA.

CASE INFORMATION

Statement of Claim filed on or about: February 12, 1999.

Opposition to Motion to Dismiss filed by Claimant on or about: July 29, 1999.

Claimant signed the Uniform Submission Agreement: January 29, 1999.

Joint Statement of Answer and Motion to Dismiss filed by West America, Kay, and Myers on or about: May 20, 1999.

West America signed the Uniform Submission Agreement: April 7, 1999.

Kay signed the Uniform Submission Agreement: April 7, 1999.

Myers signed the Uniform Submission Agreement: July 8, 1999.

Newman did not file a Statement of Answer or sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; breach of fiduciary duty; negligence and gross negligence; negligent supervision; common law fraud; violation of securities laws; agency and control person liability; conversion; and the unauthorized transfer of shares from Claimant's account.

Unless specifically admitted in their Answer, West America, Kay, and Myers denied the allegations made in the Statement of Claim and asserted the following defenses: Myers transferred the shares in question pursuant to instructions that were verified by Claimant;

Claimant received statements reflecting the transfer and thereafter made no complaint; and Claimant's instructions to transfer the shares back into his account were immediately followed.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$125,000.00; attorneys' fees in the amount of \$62,500.00; treble damages; pre and post-award interest; punitive damages in such amount as the arbitrators deem appropriate; and payment of all of Claimant's costs, expenses, and disbursements.

West America, Kay, and Myers requested that this matter be dismissed in its entirety and that they be awarded their costs and reasonable expenses in defending this claim.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearings in this matter, Claimant dismissed, without prejudice, all claims against Respondent Newman. Therefore, Newman did not participate in the hearings in this matter.

The parties agreed that the non-public arbitrator, Theodore R. Turner, Jr., would serve as chairperson in this matter.

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. West America and Myers be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$125,000.00 as compensatory damages, plus interest at the rate of 9% accruing from October 15, 2000 until paid.
2. West America and Myers be and hereby are jointly and severally liable for and shall pay to Claimant punitive damages in the amount of \$50,000.00. The panel based this award of punitive damages on Mastrobuono v. Shearson Lehman Hutton, Inc., 115 S.Ct.Rep. 12/2 (1995) (U.S. Supreme Court).
3. Respondents are hereby restrained and enjoined from withdrawing cash and securities from its clearing firm, PaineWebber, in an amount that would cause Respondents' balance to fall below \$200,000.00.
4. Counsel for Claimant is hereby directed to serve a copy of this Award on

PaineWebber immediately by facsimile, express courier, or U.S. mail.

5. West America and Myers be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$200.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution, Inc.
6. All other requests for relief are hereby denied.

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	= \$ 200.00
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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 events giving rise to the dispute. In this matter, West America Securities Corp. is a party.

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

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

One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conference: April 3, 2000	1 session
Four (4) Hearing sessions x \$750.00	= \$3,000.00
Hearing Dates: August 14, 2000	2 sessions
August 15, 2000	2 sessions
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Total Forum Fees	= \$3,750.00

The Panel has assessed all of the forum fees jointly and severally against West America and Myers.

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 200.00
<u>Total Fees</u>	= \$ 200.00
<u>Less payments</u>	= \$ 950.00
<u>Refund Due Claimant</u>	= \$ 750.00

As stated in the "Award" section above, West America and Myers are jointly and severally liable and shall reimburse Claimant for the \$200.00 filing fee.

2. West America be and hereby is solely liable for:

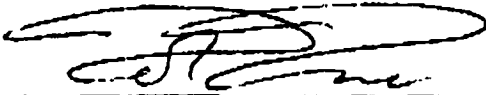
<u>Member Fees</u>	= \$4,600.00
<u>Total Fees</u>	= \$4,600.00
<u>Less payments</u>	= \$2,081.50
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$2,518.50

3. West America and Myers be and hereby are jointly and severally liable for:

Forum Fees	= \$3,750.00
Total Fees	= \$3,750.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$3,750.00

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

Concurring Arbitrators' Signatures



Theodore R. Turner, Jr.
Industry Arbitrator, Presiding Chair

10-25-00
Signature Date

Allan E. Johnson
Public Arbitrator

Signature Date

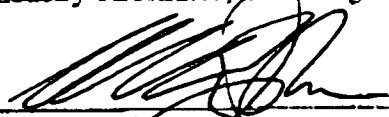
Jay S. Siegel

Signature Date

October 27, 2000
Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

Theodore R. Turner, Jr.
Industry Arbitrator, Presiding Chair



Allan E. Johnson
Public Arbitrator

Public Arbitrator

Signature Date

10/26/00

Signature Date

Signature Date

October 27, 2000
Date of Service (For NASD office use only)

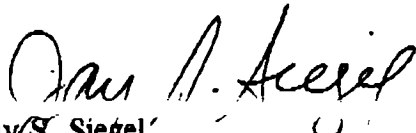
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Theodore R. Turner, Jr.
Industry Arbitrator, Presiding Chair

Signature Date

Allan E. Johnson
Public Arbitrator

Signature Date


Jay S. Siegel
Public Arbitrator


Signature Date

October 27, 2000
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