

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Charles V. Marais, (Claimant) vs. Barclays de Zoete Wedd, Inc. and Barclays Capital, Inc. a/k/a BZW Securities Inc. a/k/a Barclays de Zoete Wedd Securities, (Respondents)

Case Number: 00-02520

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Charles V. Marais, hereinafter referred to as "Claimant": Jeffrey L. Liddle, Esq., Liddle & Robinson, L.L.P., New York, NY.

Respondent Barclays Capital, Inc. a/k/a BZW Securities Inc. a/k/a Barclays de Zoete Wedd Securities ("Barclays"): Robin D. Fessel, Esq., Sullivan & Cromwell, New York, NY.

Respondent Barclays de Zoete Wedd, Inc. ("BZW") did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: June 13, 2000.

Claimant signed the Uniform Submission Agreement: June 8, 2000.

Statement of Answer filed by Barclays on or about: September 18, 2000.

Barclays did not sign a Uniform Submission Agreement.

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

CASE SUMMARY

Claimant asserted the following causes of action: wrongful termination; breach of employment agreement; quantum meruit; fraud; negligent misrepresentation; promissory estoppel; violations of the New York Labor Law; and tortious interference with prospective economic advantage.

Unless specifically admitted in its Answer, Barclays denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief may be granted; Claimant's claims are barred, in whole or in part, by the applicable statutes of limitations and/or the equitable doctrine of laches; Claimant's claims are barred, in whole or in part, because the statements on the Form U-5 and the

accompanying DRP-5 forms are true; Claimant's claims are barred, in whole or in part, because the statements on the Form U-5 and the accompanying DRP-5 forms are privileged; Claimant's claims are barred, in whole or in part, by the Statute of Frauds; and Claimant's claims are barred, in whole or in part, by the equitable doctrines of waiver and estoppel.

RELIEF REQUESTED

Claimant requested damages in an amount not less than \$2,342,500.00, based upon the following components: \$250,000.00 representing Claimant's 1995 bonus; \$350,000.00 representing Claimant's 1996 bonus; \$50,000.00 representing the pay increase promised to Claimant for 1996; \$120,000.00 representing the pension contributions Respondents were obligated to make on Claimant's behalf; \$124,000.00 representing the three months of notice pay to which Claimant was entitled; liquidated damages under the labor law in the amount of \$248,500.00; \$200,000.00 representing damages stemming from Respondents' tortious interference with his prospective economic advantage; punitive damages in an amount not less than \$1,000,000.00, as well as interest, costs, and attorneys' fees. Claimant also requested severance pay, and reimbursement of his business expenses in an amount to be determined at the hearing, as well as such other and further relief as the Panel deems proper.

Barclays requested that the Panel dismiss Claimant's Statement of Claim and award Barclays its costs, attorneys' fees, and such additional relief as is appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

In his Statement of Claim, Claimant also named Barclays de Zoete Wedd Services Limited, BZW Ltd., Barclays de Zoete Wedd International Equities Limited, Barclays de Zoete Wedd Equity Derivatives Limited, BZW Securities Limited, Barclays Bank PLC, and Barclays de Zoete Wedd Pensions Limited as Respondents. These entities were not members of the NASD or associated persons during the period of time in dispute, and did not voluntarily submit to the jurisdiction of NASD Dispute Resolution in this matter.

BZW and Barclays did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and are bound by the determination of the Panel on all issues submitted.

Upon review of the file, the undersigned Arbitrators determined that Respondent BZW has been properly served with the Statement of Claim and received due notice of the hearings, and that the arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

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. The Panel finds that the Form U-5 filed with NASD for Claimant on September 26, 1996 contains defamatory information. The Panel recommends the expungement of items 12, 13, 14, and 15 on the Form U-5, the corresponding DRP-5(s) for those items and Attachments 1 and 2 based on the defamatory nature of the information contained therein. The Panel also finds that BZW and Barclays failed to prove that Claimant violated the provisions of enhanced supervision and home leave. The following items in Claimant's Form U-5 are to be changed:

Item 12 - The explanation "See Attachment 1" is to be expunged. The following explanation should be provided: "BZWSI concluded, after internal review, that Mr. Marais exercised poor judgment in providing securities price lists to a client addressed 'To whom it may concern' and labeling them 'valuations'".

Item 13A - The "Yes" response and "See Attachment 1" are to be expunged and replaced with a "No" response.

Item 14 - The "Yes" response should remain. "See Attachment 1" is to be expunged and a new DRP-5 should be filed by Barclays which should read as follows:

- Item 1 - 14 X
- Item 2 - Yes X
- Item 3 - SFA (UK)
- Item 4 - Unknown
- Item 5 - On or about February 6, 1996
- Item 7 - Unknown
- Item 8 - No adverse action was taken

Item 15 - The "Yes" response should be expunged and replaced with a "No" response.

Any other filing with regulatory agencies by Respondents with reference to Claimant are to be revised accordingly, including the 8T.

2. BZW and Barclays are jointly and severally liable for and shall pay to Claimant the sum of \$1,250,000.00, plus interest from January 1, 2000, for damages Claimant has sustained by reason of the defamatory Form U-5 filed for him.

3. BZW and Barclays are jointly and severally liable for and shall pay to Claimant damages for breach of his employment contract up to his discharge giving due deference to Claimant's original British contract as follows:

Bonus 1995	\$250,000.00, plus interest from February 6, 1996
Bonus 1996	\$167,500.00, plus interest from February 1, 1997
Salary increase	\$ 33,336.00, plus interest from September 18, 1996
Vacation pay	\$ 37,865.00, plus interest from September 18, 1996
Notice pay	\$ 66,746.00, plus interest from December 18, 1996
Airfare	\$ 36,156.00, plus interest from September 18, 1996
Tax preparation	\$ 1,500.00, plus interest from September 18, 1996
Housing allowance	\$ 13,333.00, plus interest from December 18, 1996
Pension (UK)	\$236,031.00

4. BZW and Barclays are jointly and severally liable for and shall pay to Claimant the sum of \$106,242.00, plus interest from September 18, 1996, as liquidated damages for wages withheld and awarded as contract damages pursuant to Section 198 of the New York Labor Law.

5. BZW and Barclays are jointly and severally liable for and shall pay to Claimant the sum of \$248,000.00 as legal fees, pursuant to Section 198 of the New York Labor Law.

6. BZW and Barclays are jointly and severally liable for and shall pay to Claimant the sum of \$1,000,000.00 as punitive damages. The Panel finds that Respondents willfully and wantonly disregarded the rights of Claimant in their filing of the Form U-5; in the manner in which Claimant was treated by Respondents from February to September 1996; in withholding records from Claimant's counsel; in consciously disregarding a specific order of the Panel to produce a document after being warned that a sanction would follow; in subjecting Claimant to humiliation in their various interrogations of him during 1996; in failing to advise Claimant to retain his own counsel at the appropriate time; and misleading Claimant as to the likelihood of his continued employment with Respondent.

7. All interest awarded shall be at the rate of 9% per annum.

8. BZW and Barclays are jointly and severally liable for and shall pay to Claimant the

sum of \$500.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.

9. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$ 500.00

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, Barclays Capital, Inc. is a party.

Member surcharge = \$ 2,500.00
Pre-hearing process fee = \$ 600.00
Hearing process fee = \$ 4,500.00

Adjournment Fees

Adjournments requested during these proceedings:

Oct. 17, 18, 19 & 23, 2001, adjournment by Barclays = \$ 1,200.00
Nov. 14, 2001, adjournment by Barclays = \$ 1,000.00

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

Seven (7) Pre-hearing sessions with a single arbitrator x \$450.00 = \$ 3,150.00
Pre-hearing conferences: November 12, 2001 1 session
November 14, 2001 1 session
November 20, 2001 1 session
November 26, 2001 1 session
January 31, 2002 1 session
March 15, 2002 1 session
March 28, 2002 1 session

Three (3) Pre-hearing sessions with Panel x \$1,200.00		= \$ 3,600.00
Pre-hearing conferences:		
April 23, 2001	1 session	
August 22, 2001	1 session	
November 8, 2001	1 session	
Thirty-seven (37) Hearing sessions x \$1,200.00		= \$44,400.00
Hearing Dates:		
November 13, 2001	1 session	
November 15, 2001	2 sessions	
November 27, 2001	2 sessions	
November 28, 2001	2 sessions	
November 29, 2001	2 sessions	
April 11, 2002	2 sessions	
April 12, 2002	2 sessions	
April 15, 2002	2 sessions	
April 16, 2002	2 sessions	
April 17, 2002	2 sessions	
April 18, 2002	2 sessions	
April 19, 2002	2 sessions	
April 22, 2002	2 sessions	
April 23, 2002	2 sessions	
May 17, 2002	2 sessions	
June 17, 2002	2 sessions	
June 25, 2002	2 sessions	
June 28, 2002	2 sessions	
July 22, 2002	2 sessions	
Total Forum Fees		= \$51,150.00

The Panel has assessed all of the forum fees jointly and severally against BZW and Barclays.

Fee Summary

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 500.00
Total Fees	= \$ 500.00
<u>Less payments</u>	= \$ 1,700.00
Refund Due Claimant	= \$ 1,200.00

As stated in the "Award" section above, BZW and Barclays are jointly and severally liable and shall reimburse Claimant for the \$500.00 filing fee.

2. Barclays is solely liable for:

Member Fees	= \$ 7,600.00
<u>Adjournment Fee</u>	= \$ 2,200.00
Total Fees	= \$ 9,800.00
<u>Less payments</u>	= \$ 8,800.00
Balance Due NASD Dispute Resolution	= \$ 1,000.00

3. BZW and Barclays are jointly and severally liable for:

<u>Forum Fees</u>	= \$51,150.00
Total Fees	= \$51,150.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$51,150.00

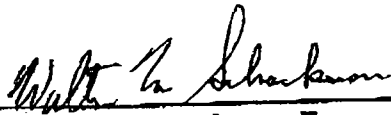
All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Walter M. Schackman, Esq.	-	Public Arbitrator, Presiding Chair
Christina Kallas, Esq.	-	Public Arbitrator
Tama Traberman	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Walter M. Schackman, Esq.
Public Arbitrator, Presiding Chair

9/25/02
Signature Date

Christina Kallas, Esq.
Public Arbitrator

Signature Date

Tama Traberman
Non-Public Arbitrator

Signature Date

September 26, 2002
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

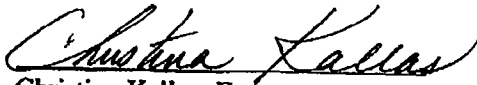
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Public Arbitrator, Presiding Chair

Signature Date


Christina Kallas, Esq.
Public Arbitrator

9/23/02
Signature Date

Tama Traberman
Non-Public Arbitrator

Signature Date

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Public Arbitrator, Presiding Chair

Signature Date

Christina Kallas, Esq.
Public Arbitrator

Signature Date

Tama Traberman
Tama Traberman
Non-Public Arbitrator

September 25, 2002
Signature Date

September 26, 2002

Date of Service (For NASD Dispute Resolution use only)