

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Lisa A. Gordon

and

02-06616  
Omaha, Nebraska

Name of Respondent

Investment Professionals, Inc.

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**REPRESENTATION OF PARTIES**

Lisa A. Gordon ("Claimant") was represented by Alan J. Mackiewicz, Esq., Omaha, Nebraska.

Investment Professionals, Inc. ("Respondent") was represented by Eric A. Pullen, Esq., Loeffler, Jonas & Tuggey, LLP., San Antonio, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about October 25, 2002. Submission Agreement of Claimant Lisa A. Gordon was signed on October 25, 2002. Claimant's Reply to the Motion to Bar was filed on or about January 30, 2003. Motion to Amend the Statement of Claim was filed on August 4, 2003. Amended Statement of Claim was filed on or about August 4, 2003.

Statement of Answer was filed by Respondent Investment Professionals, Inc. on or about January 30, 2003. Submission Agreement of Respondent Investment Professionals, Inc. was signed on May 29, 2003. Motion to Bar was filed on January 23, 2003. Respondent did not object to the filing of the Amended Statement of Claim.

**CASE SUMMARY**

Claimant Lisa Gordon alleges that for the period October 2000 through April 2002 Respondent Investment Professionals Inc. (IPI) improperly, and without consent, deducted IPI's share of the employer's FICA tax obligation from Ms. Gordon's paycheck. Claimant also alleges that at the time she resigned from IPI in April 2002 she was owed commissions from an investment advisory client that was billed but not yet collected at the time of her resignation. Claimant alleges that such advisory fees were wages as defined under the Nebraska Wage Payment and Collection Act, Neb. Rev. Stat. 48-1231 (the Act), and that she is entitled to 80% of the advisory fees billed, interest and

attorneys fees as provided under the Act. Respondent IPI alleges that it sent Claimant an employment agreement on at least 3 separate occasions and that the proposed agreement provided that IPI would withhold all applicable FICA taxes, including its FICA obligations, from Ms. Gordon's paychecks. Although IPI acknowledges that Claimant never signed an employment agreement, it contends that Claimant agreed to honor the terms of the proposed agreements (including the withholding of the employer's FICA tax obligation from Ms. Gordon's paycheck) by her failure to complain or object to IPI's withholding of its FICA tax obligation from Ms. Gordon's paycheck for over a year. IPI also contends that Claimant knew she was receiving a higher commission payout on all business (80% payout) due to the fact she was responsible for the employer's FICA tax obligation and she would have been responsible for that portion of the tax had she been and independent contractor and not an employee.

With regard to the claim under the Act, Respondent IPI contends that since the advisory fee in question was not collected prior to Gordon's resignation on April 8, 2002 (the fee was billed April 2, 2002 but not debited (received) by IPI until April 15, 2002), she is not entitled to the fee since she was not employed at the time the fee was collected by IPI.

#### **RELIEF REQUESTED**

1. Claimant requested reimbursement for the amounts wrongfully withheld by Investment Professionals, Inc., from her commission check, which she believes was used to pay the employer's FICA tax of Investment Professionals, Inc.
2. Claimant requested 80% commission on all investment advisory fees collected by Investment Professionals, Inc., subsequent to the termination of her employment.
3. Claimant requested prejudgment interest, in the amount of 12%, on any and all amounts due and owing to her from Investment Professionals, Inc., from the date that such amount should have, but was not paid to her.
4. Claimant requested reasonably attorney's fee, in an amount not less than 25% of the amounts recovered from Investment Professionals, Inc.

Respondents requested that the claims asserted against them be denied in its entirety.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The parties submitted post-hearing submissions at the panel's request.

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. In either case, the parties have agreed to receive

conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

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

1. Respondent Investment Professionals, Inc. shall be and hereby is liable for and shall pay to Claimant Lisa A. Gordon the sum of \$31,616.34.
2. Respondent Investment Professionals, Inc. shall be and hereby is liable for and shall pay to Claimant Lisa A. Gordon the sum of \$3,209.22 for pre-award interest due as of September 1, 2003 pursuant to Neb. Rev. Stat 45-104 for FICA payments at 12% per annum.
3. Respondent Investment Professionals, Inc. shall be and hereby is liable for and shall pay to Claimant Lisa A. Gordon the sum of \$7,500 for attorney's fees pursuant to Neb. Rev. Stat. 48-1231 of the Wage Payment and Collection Act.
4. Respondent Investment Professionals, Inc. shall reimburse the Claimant Lisa A. Gordon the claim-filing fee in the amount of 175.00.
5. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
6. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

### **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 = \$175.00

### **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 event giving rise to the dispute. In this matter, the member firm is Investment Professionals, Inc.

Member surcharge	= \$875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

### **Forum Fees and Assessments**

The Arbitration Panel 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:

[2] Pre-hearing sessions with a single arbitrator x \$450.00	= \$900.00
Pre-hearing conferences: May 8, 2003 10:00 a.m.	2 sessions
May 8, 2003 2:00 p.m.	

3 Hearing sessions x \$450.00	= \$1,350.00
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Hearing Dates:	August 12, 2003	1 session
	August 13, 2003	2 sessions

Total Forum Fees	= \$2,250.00
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The Arbitration Panel has assessed \$2,250.00 of the forum fees to Respondent Investment Professionals, Inc.

### **Fee Summary**

Claimant, Lisa A. Gordon shall be and hereby is liable for:

Initial Filing Fee	= \$ 175.00
<u>Less payments</u>	<u>= \$ 1,450.00</u>
Balance to be refunded to the Claimant Lisa A. Gordon	= \$ 1,275.00

Respondent, Investment Professionals, Inc. shall be and hereby is liable for:

Member Fees	= \$2,625.00
<u>Forum Fees</u>	<u>= \$ 2,250.00</u>

NASD Dispute Resolution, Inc.  
Arbitration No. 02-06616  
Award Page 5 of 5

Total Fees	= \$4,875.00
<u>Less payments</u>	<u>= \$2,625.00</u>
Balance Due NASD Dispute Resolution	= \$2,250.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

**Tracy DeWald, Esq. - Public Arbitrator, Presiding Chair**

Concurring Arbitrators:

/s/ Tracy DeWald, Esq.  
Tracy DeWald, Esq.  
Public Arbitrator, Presiding Chair

9/11/2003  
Signature Date

NASD Dispute Resolution, Inc.  
Arbitration No. 02-06616  
Award Page 5 of 5

Total Fees

= \$4,875.00

Less payments

= \$2,625.00

Balance Due NASD Dispute Resolution

= \$2,250.00

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

**Tracy DeWald, Esq.** - Public Arbitrator, Presiding Chair

Concurring Arbitrators:

Tracy DeWald

Tracy DeWald, Esq.

Public Arbitrator, Presiding Chair

9/11/03

Signature Date