

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Miller Johnson Steichen Kinnard, Inc.

v.

02-06736
Minneapolis, Minnesota

Respondents

Northland Securities, Inc., Thomas Bartzen,
Mark Beese, Steven Mattson, J. Patrick Maloney III,
Richard Reynolds, Seth Kahn, Brian Kujawa,
Paul Donna, Steven Gapinski, Gracia Butwin,
Nicholas Skarich, Ryan McEnerney, Bryan Johnson,
Cyndy Litke and Gary Nelson

Counter-Claimants

Northland Securities, Inc., Thomas Bartzen,
Mark Beese, Steven Mattson, J. Patrick Maloney III,
Richard Reynolds, Seth Kahn, Paul Donna,
Nicholas Skarich and Gary Nelson

v.

Counter-Respondent

Miller Johnson Steichen Kinnard, Inc.

Third-Party Claimants

Northland Securities, Inc., Thomas Bartzen,
Mark Beese, Steven Mattson, J. Patrick Maloney III,
Richard Reynolds, Seth Kahn, Paul Donna,
Nicholas Skarich and Gary Nelson

v.

Third-Party Respondents

Eldon Miller, David Johnson, Todd Miller, Jeffrey Houdek,
Michael Martson, Kristi Lefferts and Jeffrey Olson

Nature of Dispute: Member v. Member and Associated Persons; Member and Associated Persons v. Member; and Member and Associated Persons v. Associated Persons

REPRESENTATION OF PARTIES

Miller Johnson Steichen Kinnard, Inc. ("MJSK"), hereinafter referred to as "**Claimant**" or "**Counter-Respondent**" was represented by Joseph W. Anthony, Esq., and Steven M. Phillips, Esq., of Anthony Ostlund & Baer, P.A., Minneapolis, Minnesota.

Northland Securities, Inc. ("**Northland**"), Thomas Bartzen ("**Bartzen**"), Mark Beese ("**Beese**"), Steven Mattson ("**Mattson**"), J. Patrick Maloney III ("**Maloney**"), Richard Reynolds ("**Reynolds**"), Seth Kahn ("**Kahn**"), Brian Kujawa ("**Kujawa**"), Paul Donna ("**Donna**") Steven Gapinski ("**Gapinski**"), Gracia Butwin ("**Butwin**"), Nicholas Skarich ("**Skarich**"), Ryan McEnerney ("**McEnerney**"), Bryan Johnson ("**Bryan Johnson**"), Cyndy Litke ("**Litke**") and Gary Nelson ("**Nelson**"), hereinafter referred to as "**Respondents**," were represented by Thomas B. Hatch, Esq., Stacey P. Slaughter, Esq., and Bruce Manning, Esq., of Robins, Kaplan, Miller & Ciresi, L.L.P., Minneapolis, Minnesota.

Eldon Miller ("**Eldon Miller**"), David Johnson ("**David Johnson**"), Todd Miller ("**Todd Miller**") Jeffrey Houdek ("**Houdek**"), Michael Martson ("**Martson**"), Kristi Lefferts ("**Lefferts**") and Jeffrey Olson ("**Olson**"), hereinafter referred to as "**Third-Party Respondents**," were represented by Joseph W. Anthony, Esq., and Steven M. Phillips, Esq., of Anthony Ostlund & Baer, P.A., Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about November 7, 2002. The Submission Agreement of Claimant was signed on or about November 7, 2002, by David Johnson of Miller Johnson Steichen Kinnard, Inc.

A Joint Statement of Answer was filed by Respondents, Northland Securities, Inc., Thomas Bartzen, Mark Beese, Steven Mattson, J. Patrick Maloney, III, Richard Reynolds, Seth Kahn, Brian Kujawa, Paul Donna, Steven Gapinski, Gracia Butwin, Nicholas Skarich, Ryan McEnerney, Bryan Johnson, Cyndy Litke and Gary Nelson, on or about January 13, 2003. The Submission Agreement of Respondent, Northland Securities, Inc., was signed on or about January 13, 2003. The Submission Agreement of Respondent, Thomas Bartzen, was signed on or about January 13, 2003. The Submission Agreement of Respondent, Mark Beese, was signed on or about January 13, 2003. The Submission Agreement of Respondent, Steven Mattson, was signed on or about January 13, 2003. The Submission Agreement of Respondent, J. Patrick Maloney III, was signed on or about January 13, 2003. The Submission Agreement of Respondent, Richard Reynolds, was signed on or about January 13, 2003. The Submission Agreement of Respondent, Seth Kahn, was signed on or about January 13, 2003. The Submission Agreement of Respondent, Brian Kujawa, was signed on or about

January 13, 2003. The Submission Agreement of Respondent, Paul Donna, was signed on or about January 13, 2003. The Submission Agreement of Respondent, Steven Gapinski, was signed on or about January 13, 2003. The Submission Agreement of Respondent, Gracia Butwin, was signed on or about January 16, 2003. The Submission Agreement of Respondent, Nicholas Skarich, was signed on or about January 13, 2003. The Submission Agreement of Respondent, Bryan Johnson, was signed on or about January 13, 2003. The Submission Agreement of Respondent, Cyndy Litke, was signed on or about January 13, 2003. The Submission Agreement of Respondent, Gary Nelson, was signed on or about January 13, 2003.

A Counterclaim and Third-Party Claim were filed jointly by Northland Securities, Inc., Thomas Bartz, Mark Beese, Steven Mattson, J. Patrick Maloney III, Richard Reynolds, Seth Kahn, Paul Donna, Nicholas Skarich and Gary Nelson, hereinafter referred to as, "Counter-Claimants" or "Third-Party Claimants," on or about January 13, 2003.

Claimant filed a Reply to the Counterclaim on or about January 23, 2003.

Respondents filed an Amended Answer on or about January 28, 2003.

Third-Party Claimants filed an Amended Counterclaim and Third-Party Claim on or about January 28, 2003.

Claimant filed a Reply to Third-Party Claimants' Amended Counterclaim on or about March 14, 2003.

Third-Party Respondents filed an Answer to the Third-Party Claims on or about March 14, 2003.

Claimant filed a further Reply to Respondents' Amended Counterclaim on or about May 17, 2003.

Third-Party Respondents filed an Amended Answer to Third-Party Claim on or about May 17, 2003.

Claimant filed a Motion to Amend and Amended Statement of Claim on or about June 25, 2003.

Respondents filed a Second Amended Answer on or about July 24, 2003.

Third-Party Claimants filed an Amended Counterclaim and Third-Party Claim on or about July 24, 2003.

Kahn filed a Motion to Amend the Amended Counterclaim and Third-Party Claim on or about August 8, 2003.

Kahn filed a Motion for Sanctions and Attorney's Fees on or about August 8, 2003.

Claimant filed a Memorandum in Opposition to Kahn's Motion for Sanctions and Attorney's Fees on or about August 12, 2003.

Claimant and Third-Party Respondents filed a Memorandum in Opposition to Respondent Kahn's Motion to Amend Counterclaim and Third-Party Claim on or about August 12, 2003.

Respondent Kahn filed a Reply to the Motion for Sanctions and Attorney's Fees on or about August 27, 2003.

Respondent Kahn filed a Reply to the Motion to Amend Counterclaim and Third-Party Claim on or about September 17, 2003.

CASE SUMMARY

Claimant asserted causes of action including the following: violation of NASD Conduct Rules, breach of fiduciary duty, breach of employment agreements, tortious interference with business relationship, and unfair competition. The causes of action related to Claimant's allegation that Respondent Northland solicited the departure of over 50 MJSK employees, the vast majority of whom were employed at MJSK's profitable Fixed Income Department. Claimant asserted that Respondents transmitted MJSK's confidential customer information and trade secret information to Northland and used this information to solicit MJSK's customers and employees. Claimant asserted that Respondents' actions constituted raiding, that Respondents violated their employment agreements upon their departure and that MJSK is due monies loaned to Respondents.

Respondents denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant's claims are barred by estoppel, waiver, and unclean hands; the Employment Agreements of Respondents Nelson and Kahn are void because they were induced by fraud; the notes signed by Kahn and Gapinski are void because they were procured by fraud; and all of the non-compete agreements are contrary to public policy and not reasonably tailored to protect a legitimate interest of MJSK, and are therefore void.

In their Counterclaim and Third-Party Claim, Third-Party Claimants asserted causes of action including the following: violations of NASD Rule 2110, breach of contract, violations of Minn. Stat. § 181.14, intentional interference with prospective business advantage, and conversion. The causes of action related to Third-Party Claimants' allegation that MJSK and Third-Party Respondents did not engage in any oversight activities or supervision of the stock loan department of MJK Clearing and as a result, Third-Party Claimants' ability to earn a living was jeopardized because customers refused to do business with them due to the customers' concerns about the integrity and stability of MJSK. Third-Party Claimants also asserted that MJSK breached terms of their contracts including unpaid commissions, underwriting fees and lost opportunity to earn non-discretionary bonuses.

Claimant and Third-Party Respondents denied the allegations set forth in the Counterclaim and Third-Party Claim and asserted affirmative defenses including the following: Counter-Claimants have failed to state claims upon which relief may be granted; the claims asserted by Counter-Claimants are barred by the doctrines of estoppel, waiver, offset and unclean hands; the claims asserted by Counter-Claimants are barred by the doctrine of *pari delicto*; and the claims asserted by Counter-Claimants are barred by the parol evidence rule.

RELIEF REQUESTED

Claimant requested an award in the amount of \$30,000,000 in compensatory damages, plus punitive damages, costs, interest, attorney's fees and any other relief that the panel deemed just and equitable. In addition, Claimant requested "a permanent injunction prohibiting Northland, its employees, agents and representatives from having any contact with any employee of MJSK in any way connected to hiring or considering hiring of such employees, for a period of one year, and prohibiting Northland from actually hiring any employees from MJSK, for a period of one year." Claimant also requested compensation from Respondents Bartzen, Butwin, Donna, Gapinski, Kahn, Kujawa, Litke, Mattson, McEnerney, Morse and Skarich, for breaches of their promissory notes in the amounts of the unpaid principal and interest, costs and attorneys' fees.

Respondents requested that the claims asserted against them be denied and dismissed in their entirety and that they be awarded their costs and attorneys' fees. In the Counterclaim and Third-Party Claim, Third-Party Claimants requested in excess of \$5,000,000 in compensatory damages, plus attorneys' fees and an injunction against MJSK and its agents from making false statements about Northland and its employees. In addition, Third-Party Claimants requested an injunction compelling MJSK to pay the 5% year-end override to Respondents Bartzen, Kujawa and Butwin in April 2003, and to distribute the Juran & Moody Fiscal Poll to the individuals in the amounts specified in Mr. Mattson's letter dated November 22, 2002. Third-Party Claimants Bartzen, Mattson, Beese, Reynolds and Maloney also requested an injunction compelling MJSK to restore the Stockwalk shareholdings back into their accounts.

In Third-Party Claimants' Amended Counterclaim and Third-Party Claim dated July 24, 2003, Third-Party Claimant Kahn requested unspecified monetary damages, plus an Order requiring MJSK to rescind the transactions involving Kahn.

Claimant and Third-Party Respondents requested that the claims asserted against them in the Third-Party Claimants' Amended Counterclaim and Third-Party Claim be denied and dismissed in their entirety and that they be awarded their costs and attorneys' fees in addition to the relief requested in the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Ryan McEnerney did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code, and having answered the claim is bound by the determination of the panel on all issues submitted.

Third-Party Respondents, Eldon Miller, David Johnson, Todd Miller, Jeffrey Houdek, Michael Martson, Kristi Lefferts and Jeffrey Olson, did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the Third-Party claims and appeared at the hearing, are bound by the determination of the panel on all issues submitted.

The panel granted the Motions to Amend the parties' respective pleadings and deemed them filed during the initial pre-hearing conference call on November 19, 2003.

The panel entered an Order on or about April 12, 2004, granting Third-Party Claimants' Motion to Amend their Counterclaim and Third-Party Claim. In addition, in the April 12, 2004, Order, the panel deferred ruling on Respondent's Kahn Motion for Sanctions and Attorney's Fees.

On or about May 19, 2003, the parties submitted a stipulation to dismiss all claims asserted against Respondent Ryan McEnerney. The panel did not adjudicate any claims asserted against Respondent McEnerney.

On or about July 26, 2004, the parties submitted the following stipulation:

"All claims of Claimant MJSK asserted against Respondents J. Patrick Maloney, Paul Donna, Nicholas Skarich, Bryan Johnson and Gary Nelson and hereby voluntarily dismissed, with prejudice, and as to these claims, each party will bear its or his own attorneys fees and costs;

All claims of each and every Counterclaimant and Third-Party Claimant against Third-Party Respondents Michael Marston, Kristi Lefferts and Jeffrey Olson are hereby voluntarily dismissed, with prejudice, and as to these claims, each party will bear its, his, or her own attorneys' fees and costs; and

All claims of J. Patrick Maloney, Paul Donna, Nicholas Skarich, Bryan Johnson and Gary Neslon against Counterclaim Respondents and/or Third Party Respondents MJSK, Eldon Miller, David Johnson, Todd Miller and Jeffrey Houdek are hereby voluntarily dismissed, with prejudice, and as to these claims each party will bear its or his own attorneys' fees and costs."

Respondent Bryan Johnson was not entered as a Claimant in any claims filed.

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 originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

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

1. Respondents, Northland Securities, Thomas Bartzen, Mark Beese, Steven Mattson and Richard Reynolds are jointly and severally liable for and shall pay to Claimant, Miller Johnson Steichen Kinnard, Inc., the sum of Ten Million Dollars and No Cents (\$10,000,000.00) in compensatory damages;
2. Respondent, Steven Mattson, is solely liable for and shall pay to Claimant, Miller Johnson Steichen Kinnard, Inc., the sum of Sixty Thousand Dollars and No Cents (\$60,000.00) in damages on the breach of employment contract claim;
3. Respondent, Seth Kahn, is solely liable for and shall pay to Claimant Miller Johnson Steichen Kinnard, Inc., the sum of Twenty Three Thousand Thirty Five Dollars and No Cents (\$23,035.00) in damages on the breach of employment contract claim;
4. Claimant's claims against Respondents Brian Kujawa, Steven Gapinski, Gracia Butwin, Bryan Johnson, and Cyndy Litke are denied and dismissed with prejudice in their entirety;
5. Claimant, Miller Johnson Steichen Kinnard, Inc., is solely liable for and shall pay to Respondent, Steven Mattson, the sum of Thirty Four Thousand Three Hundred Eighty Two Dollars and Eighty Five Cents (\$34,382.85) in damages on unpaid commissions earned;
6. Respondent Mattson's counterclaim for conversion of stock certificates is denied. Respondent Mattson is directed to the lost certificate procedures to recover the stock certificates;
7. Counter-Claimants, Northland, Bartzen, Beese, Reynolds and Kahn's claims, each and all, are denied and dismissed with prejudice in their entirety;
8. All remaining Third-Party claims, each and all, are denied and dismissed with prejudice in their entirety;
9. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages and injunction requests, are denied with prejudice; and

10. 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, including but not limited to attorneys' fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

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| Initial claim filing fee | = \$ 5,000.00 |
| Counterclaim/Third-Party claim filing fee | = \$ 2,500.00 |

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, the member firms are Miller Johnson Steichen Kinnard, Inc. and Northland Securities, Inc.

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| Member surcharge | = \$ 3,750.00 |
| Pre-hearing process fee | = \$ 750.00 |
| Hearing process fee | = \$ 5,500.00 |

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

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| Five (5) Pre-hearing sessions with Chairperson x \$ 450.00 | = \$ 2,250.00 |
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|--------------------------|------------|-----------|
| Pre-hearing conferences: | 12/10/2003 | 1 session |
| | 01/06/2004 | 1 session |
| | 05/11/2004 | 1 session |
| | 06/15/2004 | 1 session |
| | 07/09/2004 | 1 session |

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| Two (2) Pre-hearing sessions with Panel x \$ 1,200.00 | = \$ 2,400.00 |
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|--|------------|-----------|----------------|
| Pre-hearing conferences: | 11/19/2003 | 1 session | |
| | 04/08/2004 | 1 session | |
| Twenty Four (24) Hearing sessions with Panel x \$ 1,200.00 | | | = \$ 28,800.00 |

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|----------------|------------|------------|
| Hearing Dates: | 07/19/2004 | 2 sessions |
| | 07/20/2004 | 2 sessions |
| | 07/21/2004 | 2 sessions |
| | 07/22/2004 | 2 sessions |
| | 07/23/2004 | 2 sessions |
| | 07/26/2004 | 2 sessions |
| | 07/27/2004 | 2 sessions |
| | 07/28/2004 | 2 sessions |
| | 07/29/2004 | 2 sessions |
| | 07/30/2004 | 2 sessions |
| | 08/05/2004 | 2 sessions |
| | 08/06/2004 | 2 sessions |

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| Total Forum Fees | = \$ 33,450.00 |
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The Arbitration Panel has assessed \$ 16,725.00 of the forum fees, jointly and severally to Miller Johnson Steichen Kinnard, Inc. and Eldon Miller, David Johnson, Todd Miller, Jeffrey Houdek

The Arbitration Panel has assessed \$ 16,725.00 of the forum fees jointly and severally to Northland Securities, Thomas Bartzen, Mark Beese, Steven Mattson, Richard Reynolds and Seth Kahn.

Fee Summary

Claimant, Miller Johnson Steichen Kinnard, Inc. is liable for:

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|-------------------------------------|----------------|
| Initial Filing Fee | = \$ 5,000.00 |
| Member Fees | = \$ 10,000.00 |
| Total Fees | = \$ 15,000.00 |
| Less payments | = \$ 15,000.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondent, Northland Securities, Inc., is liable for:

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|-------------------------------------|----------------|
| Member Fees | = \$ 10,000.00 |
| Total Fees | = \$ 10,000.00 |
| Less payments | = \$ 10,000.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Claimant, Miller Johnson Steichen Kinnard, Inc., and Third-Party Respondents, Eldon Miller, David Johnson, Todd Miller, Jeffrey Houdek, are jointly and severally liable for:

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|-------------------------------------|----------------|
| <u>Forum Fees</u> | = \$ 16,725.00 |
| <u>Total Fees</u> | = \$ 16,725.00 |
| <u>Less payments</u> | = \$ 1,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 15,525.00 |

Counter-Claimant, Northland Securities, Inc., and Third-Party Claimants, Thomas Bartzen, Mark Beese, Steven Mattson, Richard Reynolds, and Seth Kahn, are jointly and severally liable for:

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| Counterclaim/Third-Party Claim Filing Fee | = \$ 2,500.00 |
| <u>Forum Fees</u> | = \$ 16,725.00 |
| <u>Total Fees</u> | = \$ 19,225.00 |
| <u>Less payments</u> | = \$ 3,700.00 |
| Balance Due NASD Dispute Resolution | = \$15,525.00 |

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

ARBITRATION PANEL

Richard A. Mosman, Esq. - Public Arbitrator, Presiding Chair
James A. Lundberg, Esq. - Public Arbitrator
Guy S. Sasanfar- Non-Public Arbitrator

Concurring Arbitrators:

Richard A. Mosman, Esq.
Public Arbitrator, Presiding Chair

Signature Date

James A. Lundberg, Esq.
Public Arbitrator

Signature Date

Guy S. Sasanfar
Non-Public Arbitrator

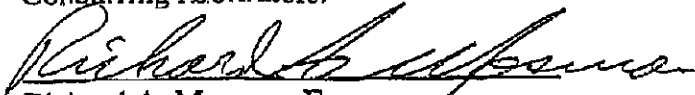
Signature Date

9/15/04
Date of Service (NASD use only)

ARBITRATION PANEL

Richard A. Mosman, Esq. - Public Arbitrator, Presiding Chair
James A. Lundberg, Esq. - Public Arbitrator
Guy S. Sasanfar - Non-Public Arbitrator

Concurring Arbitrators:


Richard A. Mosman, Esq.
Public Arbitrator, Presiding Chair

Sept. 14, 2004
Signature Date

James A. Lundberg, Esq.
Public Arbitrator

Signature Date

Guy S. Sasanfar
Non-Public Arbitrator

Signature Date

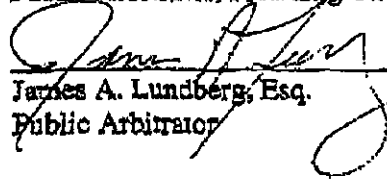
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James A. Lundberg, Esq. - Public Arbitrator
Guy S. Sasanfar - Non-Public Arbitrator

Concurring Arbitrators:

Richard A. Mosman, Esq.
Public Arbitrator, Presiding Chair


James A. Lundberg, Esq.
Public Arbitrator

Signature Date

9/14/2004
Signature Date

Guy S. Sasanfar
Non-Public Arbitrator

Signature Date

9/15/04
Date of Service (NASD use only)

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James A. Lundberg, Esq. - Public Arbitrator
Guy S. Sasanfar - Non-Public Arbitrator

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Richard A. Mosman, Esq.
Public Arbitrator, Presiding Chair

Signature Date

James A. Lundberg, Esq.
Public Arbitrator

Signature Date



Guy S. Sasanfar
Non-Public Arbitrator

9/13/04

Signature Date

9/15/04

Date of Service (NASD use only)