

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Alan Jay Jenks

90-01737

Name of Respondent

John G. Kinnard and Company, Inc.

REPRESENTATION OF PARTIES

Alan Jenks was represented by Stuart N. Bennett, Esq. and Wesley B. Howard, Esq. of Brega & Winters, P.C., Denver, CO.

John G. Kinnard & Co., Inc. was represented by F. Chet Taylor, Esq. and Ted S. Meikle, Esq. of Fredrikson & Bryon, Minneapolis, MN.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about August 17, 1990, Alan Jenks ("Claimant") alleged that John G. Kinnard & Co., Inc. ("Respondent") breached his employment contract, breached the covenant of good faith and fair dealing implied in all contracts, promissory estoppel, and engaged in outrageous conduct.

In its Statement of Answer and Counterclaim filed with the NASD on or about November 26, 1990, Respondent stated that it not breach its employment agreement with Claimant since Claimant was an employee at will who could be terminated at any time, that the claim for breach of an implied duty of good faith fails as a matter of law since Colorado does not recognize a cause of action for breach of an implied duty of good faith in connection with employment agreements, and denied the other allegations set forth in the Statement of Claim. Respondent, in it's Counterclaim alleged that Claimant was negligent and engaged in improper conduct in handling the account of Luayne Chatham; and that the Claimant made material misrepresentations upon which Respondent relied upon.

In his Reply to Kinnard's Counterclaim dated December 27, 1990, Claimant stated that he at all times acted properly and responsibly with respect to the Chatham account and denied the allegations of misrepresentation.

RELIEF REQUESTED

Claimant requested an award of damages for lost wages and bonuses through April, 1992 in the amount of \$134,000.00 plus 15% bonus based on net income from the Englewood branch; unspecified compensatory damages for loss to reputation and future earning capacity; unspecified compensatory damages to compensate him for the loss of personal production resulting from his termination; unspecified punitive damages; attorney's fees; costs; and interest.

Respondent requested that the Statement of Claim be dismissed and an award of \$13,839.90, plus interest at the rate of 8% per year on the first counterclaim, and the return of all salary and bonuses paid to Claimant, which includes \$4,000.00 per month for approximately one year and a \$20,000.00 signing bonus, attorney's fees and costs.

Claimant requested that the counterclaim be dismissed.

PROCEDURAL MATTERS

On Monday, October 21, 1991, Tuesday, October 22, 1991, and Wednesday, October 23, 1991 in Denver, Colorado during a hearing lasting a total of 8 (eight) sessions, including a pre-hearing conference with the Chairman on July 31, 1991, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on August 15, 1990 by Alan Jenks on January 23, 1991 by Gerald M. Gifford on behalf of Respondent John G. Kinnard & Co., Inc.

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.

AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions of the parties, has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim shall be and hereby is dismissed and denied in its entirety;
2. The Counterclaim asserted herein shall be and hereby is dismissed and denied in its entirety;
3. Each party shall bear its own costs and expenses incurred in this matter not specifically enumerated herein; and
4. Pursuant to Section 44(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the non-refundable filing fee in the amount of \$500.00 and shall retain the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant Alan J. Jenks, the National Association of Securities

Dealers, Inc. shall retain the non-refundable filing fee in the amount of \$500.00 and shall retain the hearing session deposit in the amount of \$600.00 previously deposited with the NASD by the Respondent John G. Kinnard & Co., Inc. Claimant shall pay to the NASD the sum of \$1,525.00 and Respondent shall pay to the NASD the sum of \$1,675.00 as forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

11/7/91



Cletus Byrne
Presiding Chair
Industry Arbitrator

Robert Fauw
Industry Arbitrator

John King, Esq.
Industry Arbitrator

Date Served by CHSD: 11-26-91.

Dealers, Inc. shall retain the non-refundable filing fee in the amount of \$500.00 and shall retain the hearing session deposit in the amount of \$600.00 previously deposited with the NASD by the Respondent John G. Kinnard & Co., Inc. Claimant shall pay to the NASD the sum of \$1,525.00 and Respondent shall pay to the NASD the sum of \$1,675.00 as forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

November 5, 1991

Cletus Byrne
Presiding Chair
Industry Arbitrator

Robert S. Pauw
Robert Pauw
Industry Arbitrator

John King, Esq.
Industry Arbitrator

Dealers, Inc. shall retain the non-refundable filing fee in the amount of \$500.00 and shall retain the hearing session deposit in the amount of \$600.00 previously deposited with the NASD by the Respondent John G. Kinnard & Co., Inc. Claimant shall pay to the NASD the sum of \$1,525.00 and Respondent shall pay to the NASD the sum of \$1,675.00 as forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

Cletus Byrne
Presiding Chair
Industry Arbitrator

Robert Pauw
Industry Arbitrator

11-4-91

John King
John King, Esq.
Industry Arbitrator