

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimants

Thomas Haverstock, Michael McCarthy
Bradley Krey, and Richard Paulson
vs.

**Name of Respondent/Third
Party Claimant**

91-02032 (consolidated with
91-02239, 91-02038, 91-
02039)

Citicorp Securities Markets, Inc.
vs.

Third-Party Respondent

Donald Wallace

REPRESENTATION OF PARTIES

Claimants, Thomas Haverstock in case number 91-02032, Michael McCarthy in case number 91-02239, Bradley Krey in case number 91-02038, and Richard Paulson in case number 91-02039 were represented at the hearing by Arthur M. Holtzman, Esq. of Pedersen & Houtt, Chicago, Illinois.

Respondent/Third-Party Claimant, Citicorp Securities Markets, Inc. was represented at the hearing by Richard Lieberman, Esq. and Laurie Zeligson, Esq. of Ross & Hardies, Chicago, Illinois.

Third-Party Respondent, Donald Wallace was represented at the hearing Pro Se.

CASE INFORMATION

91-02032

Statement of Claim filed by Claimant, Thomas Haverstock on June 27, 1991. Reply to the Affirmative Defenses filed on or about October 4, 1991. Claimant, Thomas Haverstock's Submission Agreement signed on June 5, 1991.

Statement of Answer and Third-Party Claim filed against Donald Wallace by Respondent/ Third-Party Claimant, Citicorp Securities Markets on August 23, 1991. Response to the Motion To Dismiss the Third-Party Claim filed on or about October 22, 1991. Respondent's Submission Agreement signed on August 22, 1991.

Statement of Answer to the Third-Party Claim and Motion To Dismiss the Third-Party Claim filed by Third-Party Respondent, Donald Wallace on or about October 4, 1991.

91-02239

Statement of Claim filed by Claimant, Michael McCarthy on or about June 27, 1991. Reply to the Affirmative Defenses filed on or about October 4, 1991. Claimant's Submission Agreement signed on June 3, 1991.

Statement of Answer and Third-Party Claim filed by Respondent Citicorp Securities Markets, Inc. on or about August 23, 1991. Response to the Motion To Dismiss the Third-Party Claim filed on or about October 22, 1991. Respondent's Submission Agreement signed on August 22, 1991.

Statement of Answer to the Third-Party Claim and Motion To Dismiss the Third-Party Claim filed by Third-Party Respondent, Donald Wallace on or about October 4, 1991.

91-02038

Statement of Claim filed by Claimant, Bradley Krey on or about June 27, 1991. Reply to the Affirmative Defenses filed on or about October 4, 1991. Claimant's Submission Agreement signed on June 19, 1991.

Statement of Answer and Third-Party Claim filed by Respondent Citicorp Securities Markets, Inc. on or about August 23, 1991. Response to the Motion To Dismiss the Third-Party Claim filed on or about October 22, 1991. Respondent's Submission Agreement signed on August 22, 1991.

Statement of Answer to the Third-Party Claim and Motion To Dismiss the Third-Party Claim filed by Third-Party Respondent, Donald Wallace on or about October 4, 1991.

91-02039

Statement of Claim filed by Claimant, Richard Paulson on or about June 27, 1991. Reply to the Affirmative Defenses filed on or about October 4, 1991. Claimant's Submission Agreement signed on June 19, 1991.

Statement of Answer and Third-Party Claim filed by Respondent Citicorp Securities Markets, Inc. on or about August 23 1991. Response to the Motion To Dismiss the Third-Party Claim filed on or about October 22, 1991. Respondent's Submission Agreement signed on August 22 1991.

Statement of Answer to the Third-Party Claim and Motion To Dismiss the Third-Party Claim filed by Third-Party Respondent, Donald Wallace on or about October 4, 1991.

HEARING INFORMATION

The hearing was conducted on May 10, 1994 for two (2) sessions and on May 11, 1994 for one (1) session in Chicago, Illinois for a total of three (3) sessions.

CASE SUMMARY

Claimants Thomas Haverstock, Michael McCarthy, Bradley Krey, and Richard Paulson ("Claimants") in their respective Statements of Claim, stated that they were formerly employed by Respondent Citicorp Securities Markets, Inc. ("CSMI"). Claimants alleged that in 1989, they each had separately entered into compensation agreements with Respondent that provided for a certain stated annual base salary, and that they each had agreed to a certain stated incentive compensation bonus with their supervisor, Third-Party Respondent Donald Wallace ("Wallace"), and with CSMI senior management. Claimants asserted that in December 1989, CSMI notified them that their jobs would be discontinued effective January 2, 1990, and that pursuant to the stated terms of Respondent's job discontinuance policy, they were each entitled to an earned salary equivalent and a lump sum severance payment, equal to six months of their respective base salaries, in addition to their previously agreed upon annual base salary and incentive compensation. Claimants stated that Respondent paid them their respective base salaries, earned salary equivalents, and lump sum severance payments. Claimants alleged that Respondent, however, reduced Claimants' respective incentive compensation payments by an amount equal to their earned salary equivalent and lump sum severance payments. Claimants further alleged that such reduction of a previously agreed to incentive compensation constituted a breach of contract and breach of implied contract by Respondent, and resulted in the unjust enrichment of Respondent.

Respondent CSMI, in its Answer and Third-Party Claim against Donald Wallace, denied that Claimants had any agreement with CSMI that entitled them to annual incentive compensation, and alleged that Claimants knew that the giving of bonuses was completely at the discretion of the company and that this discretion was significantly affected by the performance of the business. Respondent further alleged that Claimants knew or should of known that the business was not profitable in 1989. Respondent set forth the following affirmative defenses in its Answer: the Statements of Claim failed to state a cause of action; Claimants received adequate compensation for their services to CSMI; Claimants were never promised that they would receive a certain stated incentive award for 1989; Claimants are not entitled to receive any compensation in addition to what they have already received; and Wallace lacked actual and/or apparent authority to make any representations to Claimants regarding their 1989 incentive bonuses and therefore any such representations would not be binding on Respondent.

Third-Party Respondent Wallace, in his Motion to Dismiss and Answer to the Third-Party Claim, denied each and every substantive allegation contained in the Third-Party Claim. Wallace also asserted that the Statements of Claim did not allege that he made any promises of incentive compensation to Claimants.

CSMI, in its Response to Wallace's Motion to Dismiss and Answer, asserted that the heart of the Statements of Claim is the allegation that Wallace made certain promises of incentive compensation to Claimants which, CSMI alleged, went beyond his actual or apparent authority.

RELIEF REQUESTED

Claimants requested damages equal to the amount of incentive compensation allegedly withheld by Respondent, specifically:

Claimant Haverstock requested damages of at least \$55,000;

Claimant McCarthy requested damages of at least \$45,000;

Claimant Krey requested damages of at least \$40,000; and

Claimant Paulson requested damages of at least \$52,500.

Claimants also requested accrued interest on their respective damages at the maximum legal rate, plus their respective legal fees and costs, as well as any other relief deemed just.

Respondent requested that the panel deny the relief requested by Claimants, dismiss Claimants' claims with prejudice, and award Respondent its legal fees and costs, as well as any other relief deemed just. Respondent also requested full indemnification and reimbursement from Wallace of any and all amounts assessed against CSMI, including all attorneys' fees and costs, if CSMI is found liable to Claimant based in whole or in part, on alleged representations or promises made by Wallace to Claimants.

Third-Party Respondent, Donald Wallace requested that the Third-Party Claim be dismissed and that he be awarded such further relief deemed appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Citicorp Securities Markets, Inc. filed a Motion To Disqualify Claimant's counsel from representing Claimant and Third-Party Respondent, Donald Wallace in all of the cases which were consolidated. The motion was granted by the panel.

The parties have agreed that the Award in this matter may be executed by 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 remains on file with the 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. The Statement of Claim filed by each Claimant, Thomas Haverstock, Michael

McCarthy, Richard Paulson, and Bradley Krey, and later consolidated into one claim, is denied and dismissed in their entirety;

2. The Third-Party Claim filed by Respondent Citicorp Securities Markets, Inc. is denied and dismissed in its entirety;

3. The panel has ordered that each of the parties shall bear their own costs and expenses, including attorney's fees, other than those specifically enumerated under Forum Fees below.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

3 hearing sessions x \$750.00 = \$2,250.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$500, which was previously filed by each of the Claimants. The NASD shall refund each of the Claimants their hearing session deposit which was previously paid to the NASD in the amount of \$600. The panel has ordered that EACH of the Claimants shall pay additional forum fees to the NASD in the amount of \$750 for the total amount of \$2250.

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

By The Arbitration Panel:

Dated:

10-25-94

s/s Forrest D. Laidley, Esq.,
Forrest D. Laidley, Esq., Presiding
Industry Arbitrator

10-24-94

s/s Jerry W. Slansky
Jerry W. Slansky
Industry Arbitrator

10-25-94

s/s Martin D. Cohen
Martin D. Cohen
Industry Arbitrator

Date Award Served By The NASD: 11-18-94