

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

JUN 30 1992

In the Matter of the Arbitration Between

Name of Claimant

Fairmont National Bank
n/k/a Bank Midwest

Name of Respondent

First Bankers Securities
Corporation n/k/a Kingland
Capital Corporation

Name of Claimant

Kingland Capital Corporation
f/k/a First Bankers Securities
Corporation and First Bankers
Leasing Company

No. 91-04054

Name of Respondent

Bank Midwest f/k/a Fairmont
National Bank

REPRESENTATION OF PARTIES

For Claimant Fairmont National Bank: Richard D. Berens, Esq. of Johnson, Berens & Wilson, Fairmont, Minnesota.

For Claimant Kingland Capital Corporation: Douglas B. Altman, Esq., of Altman & Izek, Minneapolis, Minnesota.

For Respondent First Bankers Securities Corporation n/k/a Kingland Capital Corporation: Douglas B. Altman, Esq. of Altman & Izek, Minneapolis, Minnesota.

For Respondent Bank Midwest: Richard D. Berens, Esq. of Johnson, Berens & Wilson, Fairmont, Minnesota.

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CASE INFORMATION

Statement of Claim filed by Fairmont National Bank n/k/a Bank Midwest on: December 9, 1991.

Claimant's Submission Agreement signed on: December 2, 1991.

Statement of Answer filed by Respondent, First Bankers Securities Corporation n/k/a Kingland Capital Corporation on: February 10, 1992.

Respondent First Bankers Securities Corporation n/k/a Kingland Capital Corporation's Submission Agreement signed on: January 31, 1992.

Oral Amendment to the Statement of Claim made: May 26, 1992.
Written confirmation of the oral Amendment filed on: June 12, 1992.

Statement of Claim filed by Kingland Capital Corporation f/k/a First Bankers Securities Corporation and First Bankers Leasing Company on: January 27, 1992.

Claimant's Submission Agreement signed on: January 23, 1992.

Statement of Answer filed by Respondent Bank Midwest f/k/a Fairmont National Bank on: February 24, 1992.

Respondent Bank Midwest f/k/a Fairmont National Bank's Submission Agreement signed on: February 19, 1992.

Oral Amendment to the Statement of Answer made: May 26, 1992.
Written confirmation of the oral Amendment filed: June 12, 1992.

HEARING INFORMATION

Hearing date: May 26, 1992. Two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimant Fairmont National Bank n/k/a Bank Midwest ("FNB") alleged a failure to reimburse FNB as correspondent for its fees and commissions earned during the period of March 12, 1991, and May 16, 1991, pursuant to First Bankers Securities Corporation Brokerage Services Agreement (the "Agreement") with respondent First Bankers Securities Corporation n/k/a Kingland Capital Corporation ("FBSC"). FNB asserted that the dispute arose on or about June 1, 1991, at the time FBSC allegedly failed to settle with FNB for commissions due under the Agreement.

For its Statement of Answer, FBSC denied allegations contained in the Statement of Claim. In addition FBSC asserted that the dispute arose as a result of FNB's alleged unilateral termination without cause of the Agreement.

FNB orally amended its Statement of Claim, at the hearing, to reflect damages in the amount of \$19,942.00.

In its Statement of Claim, Claimant, Kingland Capital Corporation f/k/a First Bankers Securities Corporation and First Bankers Leasing Company ("KCC") alleged that respondent Bank Midwest f/k/a Fairmont National Bank ("FNB") unilaterally terminated the Agreement, had unilaterally terminated the Computer Services Agreement with KCC, and had failed to honor the terms of both of the agreements with KCC. In addition KCC alleged breach of contract, failure to pay amounts owed, diversion of business and customers to competitor, and diversion of corporate opportunities. KCC also alleged that immediately upon termination of the Agreement, FNB began to conduct securities activities with another broker-dealer. This activity was alleged to be in direct violation of the noncompetition provision contained in the Agreement.

In its Statement of Answer, FNB denied each and every material allegation contained in the Statement of Claim. However, FNB admitted that it terminated the agreements with KCC, but alleged that KCC caused the termination because KCC failed to comply with the terms of the agreements. FNB also admitted to having engaged in securities transactions with another broker-dealer immediately following termination. In addition, FNB asserted the following reasons for termination:

1. KCC failed to pay commissions in full and in timely manner.
2. KCC failed to credit FNB's account for all sales within a 30 day time frame.
3. KCC failed to enter a customer's order after having been

specifically instructed to order an identified investment for a customer.

4. KCC failed to deliver securities to customers after having been instructed to do so on appropriate forms.

5. KCC failed to provide adequate training for representatives as agreed.

6. KCC failed to pay commissions on money market deposits in monthly installments.

7. KCC transferred customers' money market funds from one account to another without appropriate notification to the customers.

8. KCC's computer system produced inaccurate mutual fund quotes for a period of two days.

9. KCC failed to keep current prices on bonds.

10. KCC attempted to induce FNB and others similarly situated to sell a private stock issue for KCC consisting of a "guaranteed participating preferred stock" in First Banker's Capital.

11. KCC failed to employ sufficient to answer inquiries and take customer orders.

12. KCC failed to send settlement drafts to customers in a timely manner after settlement.

13. KCC failed to confirm mutual fund sales in a timely manner.

14. KCC failed to provide adequate training with respect to computer usage.

15. KCC's computer system was inadequate which caused significant time delays in placing orders.

16. KCC's employees failed to abide by instructions.

In its oral amendment to the Statement of Answer, FNB reasserted the denials and reasons for termination originally set forth in the Statement of Answer. In addition, FNB alleged that the restrictive covenant provisions contained in the Agreement were illegal and were an unlawful restraint of trade.

RELIEF REQUESTED

Claimant, FNB requested an Award of: Not less than \$19,942.00, costs and attorneys' fees; and for such other and further relief as may be just and equitable.

Respondent FBSC requested: That FNB take nothing for its claim; that it be awarded its costs and attorneys' fees; and for such

other and further relief as may be just and equitable.

Claimant KCC requested: An award of no less than \$31,000.00 in connection with the breach of the Agreement; an award of at least \$27,300.00 in connection with the breach of the Computer Services Agreement; an award of costs and attorneys' fees; and an award of such other and further relief as the arbitrators deemed appropriate.

Respondent FNB requested the following relief: That KCC take nothing for its Statement of Claim; an award of the relief requested by FNB in case No. 91-03910; an award of its costs and attorneys' fees; and for such other and further relief as may be just and equitable.

OTHER ISSUES CONSIDERED & DECIDED

On June 5, 1992, Kingland Capital Corporation filed a Motion to Reopen Testimony of David Kingland. A response was obtained from Bank Midwest, and both the Motion and Response were sent to the panel simultaneously. After review of the Motion and Response, the panel ruled to deny the Motion.

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 originals remain on file with the NASD.

AWARD

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

1. Respondent, Bank Midwest f/k/a Fairmont National Bank is liable for, and shall pay to Claimant, Kingland Capital Corporation f/k/a First Bankers Securities Corporation the sum of \$60,342.00 as satisfaction of its claims in the above-referenced consolidated cases.
2. Respondent First Bankers Securities Corporation n/k/a Kingland Capital Corporation is liable for, and shall pay to Claimant Fairmont National Bank n/k/a Bank Midwest the sum of \$19,942.00 as satisfaction of its claims in the above-referenced consolidated cases.

3. Each party shall bear its own costs, including attorneys' fees, except as set forth more fully below.

FORUM FEES

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

2 hearing sessions X \$600.00 = \$1,200.00

Pursuant to Section 43 (c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$500.00, and shall retain the hearing session deposit in the amount of \$300.00 previously paid to the NASD by Fairmont National Bank n/k/a Bank Midwest.

Pursuant to Section 43 (c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$500.00, and shall retain the hearing session deposit in the amount of \$600.00 previously paid to the NASD by Kingland Capital Corporation f/k/a First Bankers Securities Corporation and First Bankers Leasing Company.

Additional forum fees in the amount of \$300.00 are assessed against Fairmont National Bank n/k/a Bank Midwest.

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

CONCURRING ARBITRATORS

Dated:

Arthur L. Sirkin
Presiding Chair
Public Arbitrator

Katherine M. Morrill
Public Arbitrator

June 26, 1992

Emily B. Boote
Emily B. Boote
Industry Arbitrator

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Additional forum fees in the amount of \$300.00 are assessed against Fairmont National Bank n/k/a Bank Midwest.

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

CONCURRING ARBITRATORS

Dated:

June 25, 1992

Arthur L. Sirkin

Arthur L. Sirkin
Presiding Chair
Public Arbitrator

Katherine M. Morrill
Public Arbitrator

Emily B. Boote
Industry Arbitrator

3. Each party shall bear its own costs, including attorneys' fees, except as set forth more fully below.

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Additional forum fees in the amount of \$300.00 are assessed against Fairmont National Bank n/k/a Bank Midwest.

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

CONCURRING ARBITRATORS

Dated:

June 24, 1992

Arthur L. Sirkin
Presiding Chair
Public Arbitrator

Katherine M. Merrill
Katherine M. Morrill
Public Arbitrator

Emily B. Boote
Industry Arbitrator