

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Barry Potter

92-01428

Name of Respondents

Paragon Capital Corporation
George B. Levine
Daniel Levine
Frank J. Argenziano

REPRESENTATION

For Claimant, Barry Potter ("Potter"): Robin Corwin Campbell, Esq. of Atlas Pearlman Trop & Borkson, P.A., Fort Lauderdale, Florida.

For Respondents Paragon Capital Corporation ("Paragon"), George B. Levine, Daniel Levine and Frank J. Argenziano: David S. Smith, Esq. of Smith Campbell & Paduano, New York, New York.

CASE INFORMATION

Statement of Claim filed: 4/23/92 and amended 4/14/93.

Claimant's Submission Agreement signed on: 4/22/92.

A joint Statement of Answer was filed by Respondents on: 1/17/92 and supplemented on 7/7/93.

HEARING INFORMATION

On January 18, 1994 a Pre-hearing Telephone Conference lasting one session was conducted with an arbitrator.

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|-------------------------|----------------------------|
| Hearing Dates/Sessions: | 06-01-94/two (2) sessions. |
| | 06-02-94/two (2) sessions. |
| | 06-03-94/one (1) session. |
| | 12-07-94/two (2) sessions. |
| | 12-08-94/two (2) sessions. |
| | 12-09-94/one (1) session. |

Hearing Location: Fort Lauderdale, Florida.

CASE SUMMARY

Claimant alleged that in or about the latter part of 1989, he was solicited by Respondents, Paragon, George Levine, Chairman of the Board, Daniel Levine, President, and Frank Argenziano, Chief Financial Officer, to create and develop a fixed income department at Paragon; that at the time, Claimant was a broker with Prudential Securities; that Respondents induced him to leave his employment with Prudential Securities based upon representations of a guaranteed annual salary of \$36,000.00 per year, a 2% override on all commissions for non-equity business and a percentage of the profit generated by the fixed income department of 20%; that Respondents agreed that as long as the fixed income department was profitable, the foregoing agreement would remain ongoing; that Respondents breached their agreement to him by failing to honor their financial commitment to him for which he sustained monetary damages. Claimant also contended that he was fraudulently induced by Respondents to leave his employment with Prudential Securities to join Paragon.

Respondents denied all allegations of wrongdoing contained in the Statement of Claim and the Amended Statement of Claim and maintained that the terms of Claimant's employment were set forth in a written agreement which clearly reflected that it would run only from 1990 through 1991, and made no provisions for extending its terms beyond one year. Respondents denied Claimant's contention that he would be entitled to remain head of Paragon's fixed income department so long as the department was profitable, and further maintained that Paragon complied with all of its obligations regarding overrides and commissions.

RELIEF REQUESTED

Claimant requested an award of compensatory and punitive damages in excess of \$250,000.00 plus, attorneys' fees and costs.

Respondents requested dismissal of all Claims against them and further requested an award of costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

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 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. All Respondents are found not liable and, therefore, all claims against them are hereby dismissed.

2. Claimant's claims for punitive damages and Attorneys' fees are hereby denied.
3. Respondents claims for attorneys' fees and costs are hereby denied.

OTHER COSTS

The parties shall bear their own costs and expenses incurred in connection with this proceeding including attorneys' fees.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$7,800.00 (ten (10) hearing sessions X \$750.00 + one (1) pre-hearing telephone conference X \$300.00).

1. Claimant is hereby assessed Forum Fees in the amount of \$3,900.00 for which the NASD shall retain the \$750.00 previously deposited by Claimant in partial satisfaction thereof, leaving a balance due to the NASD by Claimant of \$3,150.00.
2. Respondents are hereby jointly and severally assessed Forum Fees in the amount of \$3,900.00 payable to the NASD, Inc.
3. The NASD shall retain the non-refundable filing fee of \$500.00 paid by the Claimant.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

John Darling

Industry/Chairman

/s/

Richard M. Kowalske

Industry/Panelist

Dissenting Arbitrator's Signature

/s/

David P. Wardwell

Industry/Panelist

Date of Decision: **January 11, 1995**