

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Keith L. Kauffman

92-01790

Name of Respondents

The Chicago Corporation
Paul Greening
Michael Purcell
Donald Reid
Victor Elting

REPRESENTATION

For Claimant, Keith L. Kaufmann: Donna A. Lavoie, Esq. and Paul W. Coughenour, Esq. of Barlow & Lange.

For Respondents, The Chicago Corporation, Paul Greening, Michael Purcell, Donald Reid and Victor Elting: Michael R. Turoff, Esq. and Hal R. Morris, Esq. of Arnstein & Lehr.

CASE INFORMATION

Statement of Claim filed: May 27, 1992.

Amended Statement of Claim filed: March 2, 1993.

Reply to Counterclaim filed: October 1, 1992.

Claimant's Submission Agreement signed on: May 19, 1992.

Statement of Answer and Counterclaim filed by Respondents, The Chicago Corporation, Paul Greening, Michael Purcell, Donald Reid and Victor Elting on: August 17, 1992.

Reply to Amended Claim filed by all Respondents on March 17, 1993.

Respondent, The Chicago Corporation's Submission Agreement signed on: August 13, 1992.

Respondent, Paul Greening's Submission Agreement signed on: August 13, 1992.

Respondent, Michael Purcell's Submission Agreement signed on: August 12, 1992.

Respondent, Donald Reid's Submission Agreement signed on: August 18, 1992.

Respondent, Victor Elting's Submission Agreement signed on: August 13, 1992.

HEARING INFORMATION

Pre-Hearing Conference: June 2, 1993
July 30, 1993

Hearing Dates/Sessions: September 22, 1993 - Two Sessions.
September 23, 1993 - Two Sessions.
September 28, 1993 - Three Sessions.
September 29, 1993 - Three Sessions.

Hearing Location: American Arbitration Association - Southfield, MI.

CASE SUMMARY

Claimant alleges that he was a Senior Vice President of Ashwell & Company and that his business was the sale of short term securities to various governmental entities in Michigan. Claimant alleges that Respondent, The Chicago Corporation ("TCC") acquired the stock of Ashwell & Company and that he entered into an Employment Agreement with TCC. Claimant alleges that his employment agreement stated that he was to be employed in a capacity similar to that in which he was employed at Ashwell. Claimant alleges that he was a profitable employee of TCC and that he continued to work in the Michigan office, performing essentially the same functions.

Claimant alleges that less than one year after the merger, he was transferred to a marketing position in the Asset Management Division of TCC, told to clean out his office and work out of his home. In addition, Claimant alleges that he could not sell the securities that were sold by the Asset Management Division to his clients because of statutory restrictions. Claimant alleges that he was, in effect, relieved of his duties, and was not informed of the reason for his transfer. Claimant alleges that he was not familiar with the securities sold by the Asset Management Division.

Claimant alleges that rumors began circulating that he was making disparaging comments about TCC. Claimant denies that he made such remarks about TCC. Claimant asserts that he was terminated without notice, and was not given an opportunity to cure as required by the Employment Agreement. Claimant alleges that he was terminated due to health problems, frequent absences, personnel problems and reports of negative comments being made.

Claimant alleges that Respondents, Victor Elting, Paul Greening and Michael Purcell began to defame and discredit him by telling customers he had been terminated due to a drinking problem and that he was having problems with other employees.

Respondents maintained that the employment agreement that was entered into by Claimant and TCC provided that Claimant was to devote his best efforts and most all of his business time to advance the interests of TCC. Respondents maintained that Claimant failed to do so. Respondents maintained that Claimant did not safeguard TCC's good name, instead, he disparaged TCC to his customers. Respondents maintain that when Claimant was transferred to the Asset Management Division, he retained his position as Senior Vice President, his salary and benefits. Respondents also assert that he was informed of the reasons behind his transfer. Respondents also maintain that Claimant falsely told his customers that he was transferred because he would not engage in inappropriate or possibly illegal acts. Respondents maintained that Claimant's termination was ratified by the Board of TCC.

Respondents asserted a counterclaim alleging that Claimant should not have filed his claim in Oakland County, Michigan, and that as a result of such filing, the Respondents had to incur legal fees to compel the action to arbitration. Respondents also allege that in order to induce TCC to purchase Ashwell & Company, Claimant fraudulently represented to TCC that he knew of no claims or potential claims against Ashwell. Respondents asserted that claimant filed the instant action seeking damages for claims against Ashwell, among other things, that arose prior to TCC's purchase of Ashwell. Respondents alleges that Claimant, therefore acted intentionally and recklessly failing to disclose material facts about his claim against Ashwell. Respondents further allege that Claimant violated Section 10(b) of the Securities Exchange Act of 1934.

RELIEF REQUESTED

Claimant requested damages in the amount of \$5,067,838.00 plus punitive damages, interest, costs and attorney's fees.

Respondents requested damages in an unspecified amount, plus fees and costs.

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.

Respondents filed a Request to Dismiss Certain Claims on May 6, 1993. Claimant filed a Response on May 20, 1993. A pre-hearing conference was held on June 2, 1993 and the panel heard the arguments of the parties with respect to the Motion to Dismiss. The panel granted Respondents' Motion with respect to Claim V of the Amended Statement of Claim concerning defamation as to Victor Elting. The panel also granted the Motion to Dismiss Claim XI of the Amended Statement of Claim concerning malicious prosecution with respect to all Respondents. The arbitrators reserved decision regarding the remainder of the claims, and requested briefs from the parties on other claims. Thereafter the panel dismissed Claims VI for tortious interference and Claim X brought under the Michigan Handicapper's Act as being brought beyond the applicable statute of limitations.

After the close of the hearing sessions, the parties agreed that Claim XII was dismissed as to Respondent, Donald Reid.

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) Respondent, The Chicago Corporation, is hereby liable and shall pay to the Claimant the amount of \$52,199.00 (FIFTY TWO THOUSAND ONE HUNDRED NINETY NINE DOLLARS AND NO CENTS).

- 2) The Claimant's claims against Respondents, Paul Greening, Michael Purcell, Donald Reid and Victor Elting are hereby denied in their entirety.
- 3) Claimant's claims for interest and punitive damages are hereby denied.
- 4) Respondents' counterclaims are hereby denied in their entirety.
- 5) Each party shall bear their respective costs of this action, including attorney's fees.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

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|--------------------|---|
| \$500.00 | Non-refundable filing fee for claim |
| \$250.00 | Non-refundable filing fee for counterclaim |
| \$600.00 | Pre hearing conferences (6/2/93 & 7/2/93 - each \$300.00) |
| <u>\$10,000.00</u> | Hearing Session fees (10 sessions x \$1,000.00) |

TOTAL \$11,350.00

- 1) Total forum fees in the amount of \$11,350.00 are hereby assessed equally between Claimant and Respondent, The Chicago Corporation.
- 2) Accordingly, Claimant, Keith L. Kaufmann is hereby assessed forum fees in the amount of \$5,675.00. Claimant is entitled to offset this amount with the \$2,000.00 previously paid to the NASD. Claimant is directed to pay the balance of \$3,675.00 to the NASD, Inc.
- 3) Respondent, The Chicago Corporation is hereby assessed forum fees in the amount of \$5,675.00. The Chicago Corporation is entitled to offset this amount with the \$850.00 previously deposited with the NASD, Inc. The Chicago Corporation is directed to pay the balance of \$4,825.00 to the NASD, Inc.

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Concurring Arbitrator's Signature
Name

Industry Arbitrator



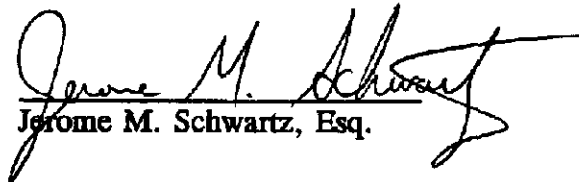
Thomas C. Girardot

Date of Decision: November 1, 1993

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Concurring Arbitrator's Signature
Name

Industry Chairperson


Jerome M. Schwartz, Esq.

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Concurring Arbitrator's Signature
Name

Industry Arbitrator


Robert A. Vogler

Date of Decision: November 1, 1993