

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Frank J. Lockwood

vs.

Case #

92-02213

Name of Respondents

Donald & Co. Securities, Inc.

Stephen Blum

Peter Guardino

Anthony Pontecorvo

Walter Wright

Courtland R. Michaels

REPRESENTATION

For Claimant, Frank J. Lockwood ("Claimant") John P. Cione, Esq.

For Respondents, Donald & Co., Securities, Inc., Stephen Blum, Peter Guardino, Anthony Pontecorvo, Walter Wright (collectively "Respondents"), Michael D. DiGiovanna, Esq. from the law firm of Dornbush, Mensch, Mandelston & Schaeffer.

CASE INFORMATION

Statement of Claim was filed on July 2, 1992.

Claimant's Submission agreement was signed on July 2, 1992.

Amended Statement of Claim was filed on August 18, 1992.

Joint Statement of Answer was filed by Respondents on October 5, 1992.

Donald & Co., Securities, Inc.'s Submission Agreement was signed on October 5, 1992.

Stephen Blum's Submission Agreement was signed on October 22, 1993.

Peter Guardino's Submission Agreement was signed on October 22, 1993.

Anthony Pontecorvo's Submission Agreement was signed on October 19, 1993.

Walter Wright's Submission Agreement was signed on October 19, 1993.

Courtland R. Michaels did not execute a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions: October 27, 1993 - 2 Sessions
 October 28, 1993 - 2 Sessions
 January 26, 1994 - 2 Sessions
 January 27, 1994 - 1 Session

Hearing Location: NASD offices located at 33 Whitehall Street, New York, New York.

CASE SUMMARY AND FINDINGS

Claimant, Frank J. Lockwood, a former branch manager of Respondent, Donald & Co. Securities, Inc. ("Donald & Co."), brought this arbitration against Respondents seeking unpaid compensation and expenses, compensatory damages for lost compensation after the termination of his employment by Donald & Co., and punitive damages for libel and slander. The claims arise out of claimant's employment as branch manager of the Red Bank, New Jersey, office during the period January 18, 1991 to March 26, 1992. There are no counterclaims.

During the hearing, the arbitrators dismissed, with prejudice, the proceeding against respondent Courtland R. Michaels, assuming the NASD has jurisdiction over him. Mr. Michaels appeared by counsel, but did not sign a submission agreement and did not participate in the arbitration. The arbitrators also dismissed the claims against Respondents Stephen Blum, Peter Guardino, Anthony Pontecorvo and Walter Wright, without prejudice to reinstatement of these claims in the event an award for unpaid compensation is rendered and not paid by Donald & Co.; this order was made upon the representation by respondents' counsel that Donald & Co. would be financially responsible for unpaid compensation if such an award were made.

Claimant organized Donald & Co.'s Red Bank branch office and was the branch manager. His compensation was a base salary plus an override on commissions; the details of the compensation are contained in a memorandum. The nub of the dispute concerns the override for March 1992; the override on production of the Messrs. Incantalupo; the override on production of Cosmo Tacopino; vacation pay; and reimbursement for expenses. Three of these claims are conceded: the March override of \$5,629.04; the Incantalupo override of \$1,400.00; and \$433.13 expenses. The Tacopino override and vacation pay are disputed.

Following the termination of claimant's employment, which claimant testified was voluntary and respondents claim was a firing, a form U-5 was filed showing that claimant was "Permitted to Resign". The explanation provided was: "Mr. Lockwood did not share the same views of management of Donald & Co. Sec. Inc. There was an impass (sic) on the operations of our Syndicate and Compliance departments." There were no other negative answers or information on the U-5. Whether the testimony of claimant or that of Respondents is believed, there was

no basis for checking off "Permitted to Resign" on the U-5; that was, at best, inaccurate. The ambiguous explanation was derogatory in tone and created doubt about claimant's performance as a branch manager, especially in light of the supervisory responsibilities of that position. During the hearings, the arbitrators, sua sponte, issued an order directing Donald & Co. to file an amended U-5 report to show that the termination was voluntary and to delete the explanation in its entirety. That direction has been carried out by Donald & Co.

Arguments made by both sides -- Claimant that he resigned, and respondents that claimant was fired -- do not aid either party's claim regarding entitlement to compensation after the date of termination. The evidence that claimant would have been employed as a branch manager by Spencer Trask & Co. in or about April or May 1992, but for the negative U-5, was not persuasive. Further, the evidence demonstrated that Claimant was gainfully employed by another firm in a similar position by the end of September 1992. Therefore, no award is made for lost compensation.

RELIEF REQUESTED

Claimant requests the following relief:

1. Salary of approximately \$5,000 pursuant to his employment agreement of four percent (4%) of the gross commissions of the Tinton Falls, NJ office in excess of \$120,000 for the trade month ended March 24, 1992;
2. Gross commissions generated by Cosimo Tacopino, a trader/salesman in the Tinton Falls, NJ office for the trade months ended January 24, 1992, February 21, 1992 and March 24, 1992;
3. Expense account reimbursement of \$370.86 incurred for the traditional monthly top producers luncheon on March 25, 1992 and the office month-end entertainment expense on March 24, 1992.
4. Two weeks vacation pay in the amount of \$2,000.00;
5. Compensatory damage in the amount of \$150,000.00 for the embarrassment and trauma caused by the deliberate, malicious U-5 which is false and was filed to discredit him despite the fact that his "voluntary resignation" was accepted and a U-5 which indicating "voluntary resignation" was prepared and signed but was changed to "permitted to resign" in order to disrupt negotiations he was having for a position with another member firm.
6. Costs of these proceedings including: filing fees; forum fees and attorney fees. Respondents request an award dismissing the claim and entering an award in their favor

and reimbursement of their attorney's fees, all costs associated with this arbitration, together with such other relief as may be just and proper.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

The arbitrators find and conclude that Respondent Donald & Co. shall pay to Claimant, as and for compensation, the sum of \$20,788.91, plus interest and at the rate of 6% per annum from April 1, 1992 to the earlier of the date of payment of the award or the date on which judgment confirming the award is entered. This award is detailed in the following table:

<u>Item</u>	<u>Amount</u>
March override	\$ 5,629.04
Incantalupo override	1,400.00
Tacopino override	11,326.74
Vacation pay	2,000.00
Expense reimbursement	<u>433.13</u>
	\$20,788.91

Further, respondent Donald & Co. shall pay to claimant, as and for damages for filing a false U-5, the sum of \$25,000.00 without pre-judgment interest.

Except as provided herein, all other claims for damages and demands for counsel fees and expenses are denied in their entirety.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Non-refundable filing Fee:	\$ 500.00
Hearing Session Fees:	\$ 750.00 X 7 Sessions = \$5,250.00
Total Fees:	\$ 5,750.00

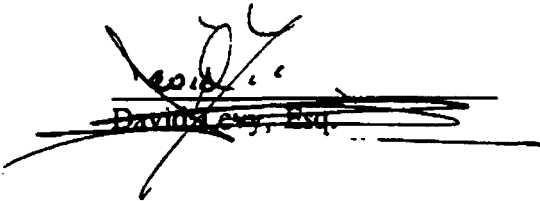
1. Claimant deposited \$1,250.00 and is entitled to a refund.
2. Donald & Co. shall satisfy the fees assessed by reimbursing Claimant \$1,250.00 and by remitting the balance \$4,500.00 to the NASD.

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

ARBITRATION PANEL

James Dolan, Esq.	-	Public Chairperson
Cynthia H. Plishtin	-	Public Panelist
David Levy, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature


~~David Levy, Esq.~~

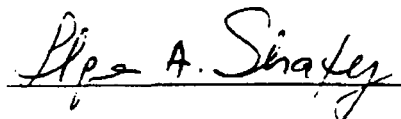
Executed on:
~~Date of Decision~~

3/1/94

Date of Decision: March 9, 1994

STATE OF NEW YORK s.s:
COUNTY OF

On this / day of March, 1994 before me personally appeared **DAVID LEVY, ESQ.** known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledge to me that he executed the same.



ILGA A. SHAFY
NOTARY PUBLIC, State of New York
No. 4797524
Qualified in Nassau County
Commission Expires 12/31/95

ARBITRATION PANEL

James Dolan, Esq.	-	Public Chairperson
Cynthia H. Plishtin	-	Public Panelist
David Levy, Esq.	-	Industry Panelist

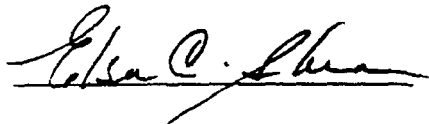
Concurring Arbitrator's Signature


James Dolan, Esq.

Date of Decision: March 9, 1994

STATE OF NEW YORK S.S:
COUNTY OF NASSAU

On this 8th day of Feb, 1994 before me personally appeared JAMES DOLAN, ESQ. known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledge to me that he executed the same.

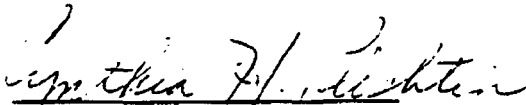


ELSA C. SHEA
NOTARY PUBLIC, State of New York
No. 4874346
Qualified in Nassau County 94
Commission Expires Dec. 15, 1994

ARBITRATION PANEL

James Dolan, Esq.	-	Public Chairperson
Cynthia H. Plishtin	-	Public Panelist
David Levy, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature


Cynthia H. Plishtin

Date of Decision: March 9, 1994

STATE OF NEW YORK s.s:
COUNTY OF NY

On this 2nd day of March, 1994 before me personally appeared **CYNTHIA H. PLISHTIN** known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledge to me that he executed the same.



VALERIE F. BAILEY
NOTARY PUBLIC, State of New York
100-22 Avenue 03
Queens County
Commission Expires July 16, 1994