

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Thomas E. Fish

92-03597

Name of Respondents

IDS Financial Services, Inc.
IDS Life Insurance Company
IDS Insurance Agencies

REPRESENTATION

For Claimant: John L. Wildeboer of Skinner, Wildeboer & Ogden in Bay City, Michigan.

For Respondent: Gary Irwin of IDS Financial Corporation, in Minneapolis, Minnesota.

CASE INFORMATION

Claimant's Statement of Claim filed: October 20, 1992.

Claimant's Submission Agreement signed on: July 24, 1992.

Respondents' Statement of Answer filed by, IDS Financial Services, Inc. and IDS Life Insurance Company on: February 12, 1993.

Respondent, IDS Insurance Agencies is a non-member and did not answer.

Respondents Amended Statement of Answer filed on: November 18, 1993.

Respondents, IDS Financial Services, Inc. and IDS Life Insurance Co's Submission Agreement signed on: February 12, 1994.

Respondent, IDS Insurance Agencies is a non-member and did not file a Submission Agreement.

HEARING INFORMATION

Prehearing Dates/Sessions: September 27, 1993 and November 29, 1993 / Two Sessions

Hearing Dates/Sessions: August 25, 1993 and May 9, 10, 11, 1994 / Eight Sessions

Hearing Location: Southfield, Michigan

CASE SUMMARY

Claimant alleged that under a sales incentive program, Respondent (IDS) promised that only those employees of Respondents who sold a given number of IDS financial plans would have access to Dow employees as a source of sales leads.

Claimant alleged that Respondents' promise should be enforced due to Promissory Estoppel. Claimant relied on this promise to his unjust detriment because he sold IDS financial plans to his clients instead of products that would have been more lucrative for him.

IDS then broke its promise by giving Dow employee leads to IDS sales representatives who did not qualify under the incentive program. Claimant alleged that this diluted the benefit of the promised restricted access to Dow employee leads.

Respondents alleged that Claimant did not qualify for the incentive program.

Even if Claimant did qualify for this program, there was no injustice because Claimant was paid for all IDS financial plans that he sold.

Respondent alleged that damages were purely speculative and impossible to calculate because leads are not guaranteed sales.

If the Promissory Estoppel claim fails, the promise of exclusivity is not enforceable for want of consideration. Claimant was already contractually obligated to perform the task and a promise of additional compensation is without consideration.

RELIEF REQUESTED

Claimant requested an award of \$120,000 representing the income he would have earned had IDS kept its promise and representation and allowed only Fish and other qualifying financial planners access to the Dow employees.

Respondents requested that the claim be dismissed and in their amended answer requested fees and expenses.

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. Claimant is awarded the sum of \$12,500.00. This is inclusive of interest, attorney's fees and costs. The panel was unanimous.
2. Forum Fees are to be reduced by 50% and this balance is to be paid by Respondent. Claimant is not liable for any Forum Fees. Harvey Frank abstained.

FORUM FEES

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

10 sessions X \$750 = \$7,500 reduced by 50% by panel to \$3,750


Forum fees Assessed Against:

1. Respondents are hereby jointly and severally liable and shall pay the sum of 3,750.00.
2. Claimant has deposited \$1,250 and is entitled to a refund of \$750 after deducting the non-refundable filing fee of \$500.

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

Concurring Arbitrators' Signatures
Name

Harold I. Gach, Esq.
Chairperson
Industry Arbitrator



Thomas Girardot
Industry Arbitrator

Harvey Frank
Industry Arbitrator

Date of Decision July 26, 1994

Concurring Arbitrators' Signatures
Name

Howe Sch 7/25/94
Harold I. Gach, Esq.
Chairperson
Industry Arbitrator

Thomas Girardot
Industry Arbitrator

Harvey Frank
Harvey Frank
Industry Arbitrator

Date of Decision July 26, 1994