

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

William Baine Morgan Dedman

92-03932

Name of Respondents

Shearson Lehman Brothers, Inc.
Robinson-Humphrey Company Inc.
Conrad J. Zimmerman, Jr.
Fred Bingham

REPRESENTATION

For Claimant: Andrew K. Epting, Jr., Esq., of Wise & Cole, P.A.

For Respondents Shearson Lehman Brothers, Inc. ("Shearson"), Robinson-Humphrey Company Inc. ("Robinson"), Conrad J. Zimmerman, Jr. ("Zimmerman") and Fred Bingham ("Bingham"): George C. Covington, Esq., of Kennedy Covington et al.

CASE INFORMATION

Statement of Claim filed: November 20, 1992.

Claimant's Submission Agreement signed on: November 13, 1992.

Joint Statement of Answer filed by Respondents on: February 18, 1993.

Respondents' Shearson and Robinson's Submission Agreements signed on: January 11, 1993.

Respondents' Zimmerman and Bingham's Submission Agreements signed on: December 8, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: November 22, 1993/2 sessions
November 23, 1993/1 session

Hearing Location: Charlotte, NC

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CASE SUMMARY

Claimant alleged he was hired by Shearson/Robinson in or about November 1990 as an institutional salesman in the area of institutional fixed income sales and that before agreeing to employment he spoke at length with Bingham regarding the relationships between Robinson/Shearson and between the institutional sales personnel and their clients.

Claimant alleged he developed an exclusive relationship with Sanwa Bank ("Sanwa"); that the industry standards and payout schedules established by Robinson/Shearson were ninety (92%) percent of the standard payout on this trade for the salesman responsible for the trade; and that the remaining eight (8%) percent was to go to Robinson/Shearson. Claimant alleged Bingham approached Zimmerman stating he would like to be involved with the trade, whereby Zimmerman agreed that Bingham should assist and be entitled to a share of the commission. Claimant alleged Bingham did not provided assistance.

Claimant alleged that after the trade was completed he was informed by Zimmerman and Bingham the payout schedule had been changed and that he was to receive thirty-five (35%) of the payout and was also informed that on all subsequent trades with Sanwa the commissions paid would be split with two-thirds (2/3) of the commission going to Claimant. Claimant alleged Zimmerman informed him that if he did not agree to the revised payment plan, he would no longer be allowed to share an office with Bingham.

Claimant alleged that days before the third quarter payout was to be made by Sanwa, he was terminated and that this termination was used by Zimmerman to deprive Claimant of his already earned share of the commissions due at the end of the third and fourth quarters.

Respondents asserted Claimant was hired by Zimmerman to work in the institutional sales area. Respondents contended Bingham had worked in that area for some time and had cultivated a number of relationships and had enjoyed a great deal of success in that area. Respondents asserted Claimant had no experience in that area and that prior to starting with Robinson/Shearson he agreed with Zimmerman that he would work under Bingham. Respondents maintained Claimant agreed that for a period of time he would receive a draw against commissions earned and after that would go to a straight commission compensation system.

Respondents maintained Claimant had personal and professional problems while working in the institutional sales area. Respondents asserted Zimmerman was concerned about Claimant's ability to take the inquiry from Sanwa and knowing Bingham had developed extensive relationships and experience in this field and had worked closely with Claimant, Zimmerman stipulated to Claimant that any commission resulting from the transaction would be shared, with thirty-five (35%) percent of the commission going to Claimant and Bingham receiving a smaller

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share. Respondents contended Claimant agreed to this arrangement and when accepting the commissions, did not take them under protest.

Respondents asserted Zimmerman and Bingham spoke to Claimant frequently about his job performance and later terminated his employment. Respondents asserted that the remaining commissions on the Sanwa transaction were paid to Shearson in 1992 and since Claimant was no longer an employee, he did not receive any portion of them.

RELIEF REQUESTED

Claimant requested: actual damages in the amount of \$47,460.71; trebled damages; pre and post judgment interest; punitive damages; costs and attorneys' fees.

Respondents requested: dismissal of the Statement of Claim 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.

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. Respondents Shearson and Robinson are hereby liable, jointly and severally, and shall pay to Claimant the sum of \$15,604.08;
2. Claimant's claims against Respondents Zimmerman and Bingham are denied;
3. Claimant's claims for trebled and punitive damages are denied;
4. All other claims are denied;
5. Each party shall bear its own costs, including attorneys' fees. Respondents Shearson and Robinson are hereby liable, jointly and severally, and shall pay to Claimant the sum of \$750.00 Said amount to reimburse to Claimant the hearing session deposit previously paid to the NASD.

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FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain Claimant's \$500.00 non-refundable filing fee and the following Forum Fees are assessed.

3 sessions X \$750.00 = net \$2,250.00 due.

Forum fees Assessed Against:

1. Respondents Shearson and Robinson are hereby liable, jointly and severally, in the amount of \$2,250.00. However, they shall reimburse Claimant as noted above; therefore, the amount due and owing to the NASD equals \$1,500.00.

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

Arbitrator Signature

Louis M. Davis/Industry Arbitrator

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William M. Marchant, Jr./Industry Arbitrator

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Arbitrator Signature

Thomas C. Looney/Industry Arbitrator