

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Howard Fudenberg

NASD Arbitration
No. 92-03955

Name of Respondent(s)

Glenfed Brokerage Services

REPRESENTATION

For Claimant: H Thomas Fehn, Esq., Fields, Fehn & Sherwin, Los Angeles, California

For Respondent: Joel Dwork, Esq., Howard Everakes & Associates, Glendale, California

CASE INFORMATION

Statement of Claim filed: November 20, 1992

Claimant's Submission Agreement signed: October 9, 1992

Statement of Answer and Counterclaim filed by Respondent: February 12, 1993

Respondent's Submission Agreement signed: February 4, 1993

HEARING INFORMATION

Pre-Hearing Conference Date/Session: None

Hearing Date/Sessions: October 19, 1993 (two sessions)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant alleged that his employment was terminated in an arbitrary, capricious and unjustified manner. Claimant further alleged violation of the implied covenant of good faith and fair dealing.

Respondent denied Claimant's allegations and alleged that pursuant to the employment contract signed by Claimant, both Mr. Fudenberg and Glenfed Brokerage Services (GBS) had the right to terminate the employment contract for any reason or no reason. Respondent further alleged that it was justified in terminating Claimant because of negligent activities by Claimant during his employment with GBS.

Respondent asserted a Counterclaim and alleged that Claimant received an unearned bonus on his commissions from the time he began his employment with GBS in April 1991. Respondent asserted that it should be refunded \$11,531.54.

RELIEF REQUESTED

Claimant requested consequential damages in an approximate amount of \$50,000.00.

Respondent requested damages in the amount of \$11,531.54.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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 National Association of Securities Dealers, Inc. (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 claims by Claimant Howard Fudenberg are dismissed.
2. Respondent Glenfed Brokerage Services is liable for and shall submit an amended U-5 form for Howard Fudenberg reflecting the following changes:
 - (a) Page 1, item 12 - change "Gross negligence" to "dismissal for cause";
 - (b) Page 2, item 4 - change "Internal review" to "arbitration";
 - (c) Page 2, item 5 - change 7/23/92 to 10/9/92;
 - (d) Page 2, item 6 - case number 92-03955;

(e) Page 2, item 8c - insert the word "partially" between "to" and "recoup"; and

(f) Page 2, item 9 - omit the first sentence of the explanation beginning with "H. Fudenberg ... office." Omit the word "The" in the second sentence. Capitalize the word "inaccurate". Add a sentence (after the dates of employment) to read: "H. Fudenberg failed to comply with proper brokerage industry practices and procedures".

3. Claimant Howard Fudenberg is liable for and shall pay to Glenfed Brokerage Services the sum of \$5,765.77. No interest is awarded.

4. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$600.00 hearing session deposit previously deposited by Claimant and shall retain the \$600.00 hearing session deposit previously deposited by Respondent as costs of this proceeding.

ARBITRATORS

Name _____ Public / Industry

J. Michael McGowan, Esq.
Lloyd S. Yu
Larry Maize

Industry Arbitrator
Industry Arbitrator
Industry Arbitrator

Concurring Arbitrators' Signatures


J. Michael McGowan, Esq.

DATE SERVED: 12/07/93

Lloyd S. Yu

Larry Maize

Date of Decision: Oct 19, 1993