

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

Roger McCosker

vs.

NASD Arbitration
#92-03991

Name of Respondents

Noddings & Associates, Inc.
Noddings Investment Group, Inc.

REPRESENTATION

For Claimant: Mark J. Romeo, Esq.
San Francisco, California

For Respondents: Daniel J. Voelker, Esq.
Seyfarth, Shaw, Fairweather & Geraldson, Chicago, Illinois

CASE INFORMATION

Statement of Claim filed: November 23, 1992

Claimant's Submission Agreement signed: March 26, 1992

Joint Statement of Answer filed: May 3, 1993

Respondents' Submission Agreements signed: April 29, 1993

HEARING INFORMATION

Hearing dates/sessions: May 5, 1994 - 3 sessions
 May 6, 1994 - 2 sessions
 June 23, 1994 - 2 sessions
 June 24, 1994 - 2 sessions

Hearing location: San Francisco, California

CASE SUMMARY

Claimant alleged Respondent Noddings & Associates breached a written contract of employment with him, under the terms of which Claimant was to be employed as a full-time sales and marketing manager for the western region of the United States. The employment agreement was to be in effect from January 1, 1988, until December 31, 1988, and to continue until termination upon 180 days prior written notice. Further, the contract set forth specific compensation arrangements.

Claimant alleged he was terminated without proper notice and without reasonable cause, and that he was not compensated according to the terms of the agreement. Claimant also alleged conversion and interference with prospective business advantage.

Respondent alleged that Claimant breached the terms of the employment agreement by failing to devote his full business time and attention to Noddings business as required under the agreement. Respondents denied that Claimant was entitled to further percentage or commission payments because of Claimant's breach of the agreement and was terminated for cause. Respondents also denied the allegations of conversion and interference with prospective business advantage. Respondent Noddings investment group requested dismissal from this action because it was not a party to the employment agreement.

RELIEF REQUESTED

Claimant requested damages of approximately \$80,000 to \$100,000 or according to proof, plus interest, punitive damages and costs of arbitration.

Respondent requested dismissal of all claims.

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 are jointly and severally liable for and shall pay to Claimant the sum of \$105,000 inclusive of interest.
2. The claim for punitive damages is dismissed.
3. The parties shall each bear their respective costs, including attorney's fees.

FORUM FEE

Pursuant to Section 44 (c) of the Code of Arbitration Procedure, the NASD shall refund the \$500 filing fee and the \$600 hearing session deposit previously paid by Claimant.

Respondents are jointly and severally assessed \$500 in filing fees and \$5,400 in forum fees for 9 sessions @ \$600/session for a total of \$5,900. Fees are payable to the NASD, Inc.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Penny Rodeen Bertelsen	Industry
Robin Lynn Berry	Industry
Thomas W. Borden	Industry