

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

William Findlay

93-00481

Name of Respondents

MDS Securities, Inc.
MDS of New Jersey, Inc.
Edward Capozzi
William Monteith
Wayne Monteith
Robert Leonard
James Morrissey

REPRESENTATION

For Claimant William Findlay ("Claimant"): Morgan W. Bentley, Esq.

For Respondents MDS Securities, Inc., and MDS of New Jersey, Inc. ("Respondents"): Paul M. Brown, Esq. of the law firm of Whitman & Ransom.

CASE INFORMATION

Statement of Claim filed: March 11, 1993.

Amended Statement of Claim filed: April 14, 1993.

Claimant's Submission Agreement signed on: March 26, 1993.

Joint Statement of Answer filed by Respondent MDS Securities, Inc. and Robert Leonard on: May 17, 1993.

Joint Statement of Answer filed by Respondents Edward Capozzi, William Monteith, Wayne Monteith, and James Morrissey on: June 17, 1993.

Respondent MDS Securities, Inc.'s Submission Agreement signed on: March 17, 1993.

Respondent James Morrissey's Submission Agreement signed on: June 4, 1993.

Respondent Wayne Monteith's Submission Agreement signed on: June 8, 1993.

Respondent William Monteith's Submission Agreement signed on: June 8, 1993.

Respondent Edward Capozzi did not execute a Submission Agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

Respondent Robert Leonard did not execute a Submission Agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Date(s)/Sessions:	February 16, 1994	-	Two Sessions
	February 17, 1994	-	Two Sessions

Hearing Location: National Association of Securities Dealers, Inc. offices located in New York City, New York.

CASE SUMMARY

Claimant alleged that the Respondents contacted the Claimant in April, 1992, pertaining to Claimant becoming associated with Respondents; that at the time Claimant was contacted by Respondents, Claimant was a successful broker at another firm grossing in excess of \$285,000.00 per year; and that to induce and solicit Claimant to join their firm, the respondents presented and promised Claimant that Claimant would become manager of the MDS Financial Store in Lakewood, New Jersey.

Claimant further alleged that Respondents had a "book" of business and had plans to expand the "book"; that respondents advised Claimant that this book would more than adequately compensate Claimant and give Claimant the opportunity to make substantial commission revenues; and that Claimant was shown an existing book of business with a dollar value of \$50 million dollars in investable assets. Claimant further alleged that Respondents were seeking Claimant's experience to begin and expand the business opportunities and revenues of the Financial Store.

Claimant also alleged that in reliance upon the representations and promises of the Respondents, Claimant resigned from his then current position and accepted a position with Respondents on or about September 8, 1992, as a Financial Consultant and as manager of the Lakewood Financial Store.

It was further alleged by Claimant that after accepting Respondents' offer of employment, Claimant sent letters to some of the customers he had been servicing at his former firm; that his former employer contacted Respondents and asked

Respondents to have Claimant cease and desist from soliciting clients in accordance with the non-solicitation agreement Claimant had entered into with his former employer; and as a result, Respondents asked Claimant not to contact the clients he had serviced at his former firm, reiterating that MDS had a large book of business for Claimant to contact and develop.

Claimant also alleged that Claimant began working strenuous hours to develop business and generate commissions; that Claimant was complemented for his efforts but then, in October, 1992, Claimant was informed that Respondents were discontinuing the financial stores; that the previous promises and representations were being unilaterally rescinded; and that Claimant would be given an opportunity to operate on a franchise basis and/or in a bank with which Respondents had a relationship.

Claimant also alleged that claimant resigned from MDS on or about November, 1992, and as a result of Respondents wrongful actions and its breach of contract, fraud, and misrepresentations, claimant lost a profitable book of business.

Respondents denied all allegations of wrongdoing and requested that the Statement of Claim be dismissed. Respondents maintained that Respondents advised Claimant that a "book" of business was available to the Financial Store; that Claimant had the authority to recruit at least one broker for the Lakewood, New Jersey office; and that Claimant could earn commission income and would be granted a percentage override of commission revenues generated by certain other brokers at the Financial Store.

Respondents further maintained that Claimant's former employer did not contact Respondents to request that Claimant cease from soliciting his former employer's clients; that Claimant was notified, directly, in writing, to cease from further solicitation of his former employers customers; and that Claimant did so cease.

Further, Respondents maintained that Claimant attended a meeting during which he was advised that a decision had been made to discontinue the Financial Store operation; that Claimant was offered other opportunities to remain with the company; and that claimant refused to accept the other opportunities offered to him by Respondents, and resigned.

Respondents also maintained that the Statement of Claim and the Amended Statement of Claim failed to allege legally sufficient claims against Respondents; that Claimant, who resigned, was an employee at will; and that Claimant was not employed by MDS, a registered broker-dealer, but was employed by MDS of New Jersey, Inc., which is not a registered broker-dealer.

RELIEF REQUESTED

Claimant requested an award favor against Respondents for actual and

compensatory damages in excess of \$300,000.00, attorneys fees and costs, the filing fee and punitive damages.

Respondents requested that the Statement of Claim and the Amended Statement of Claim be dismissed, with prejudice, and that the Respondents be awarded their costs, attorneys' fees, and that costs of this arbitration.

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.

At the hearing, the parties advised the panel that Claimant was dismissing, with prejudice, all claims against respondents Edward Capozzi, William Monteith, Wayne Monteith, Robert Leonard and James Morrissey. The parties further advised the panel that MDS of New Jersey, Inc. agreed to voluntarily submit to this arbitration and join MDS Securities, Inc. as a co-respondent.

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 against the Respondents be and hereby are dismissed in all respects.
2. All claims for punitive damages be and hereby are dismissed in all respects.
3. All parties shall bear their respective costs and attorneys' fees.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following forum fees are assessed:

4 sessions X \$750 = \$3,000 minus hearing session deposit of 750 = net \$2,250 due.

1. Claimants be and hereby are liable in the amount of \$1750.00; however, the NASD shall retain the \$1250.00 previously deposited by Claimants, therefore, the amount due and owing to the NASD equals \$500.00.

STATE OF

COUNTY OF

On this ____ day of _____, 1994, before me personally appeared
Debra A. DeJesus known to me to be the individual described in and
who executed the foregoing instrument and duly acknowledged to me that he/she
executed the same.

Debra A. DeJesus

DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County
Commission Expires January 24, 19____

STATE OF

COUNTY OF

On this ____ day of _____, 1994, before me personally appeared
_____ known to me to be the individual described in and
who executed the foregoing instrument and duly acknowledged to me that he/she
executed the same.

STATE OF

COUNTY OF

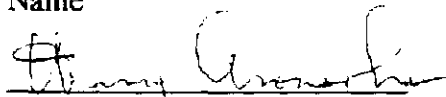
On this ____ day of _____, 1994, before me personally appeared
_____ known to me to be the individual described in and
who executed the foregoing instrument and duly acknowledged to me that he/she
executed the same.

2. Respondents be and hereby are liable in the amount of \$1750.00 to the NASD.

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

Concurring Arbitrators' Signatures

Name



Harry Aronsohn

Industry Arbitrator

Date of Decision: May 3, 1994

STATE OF

COUNTY OF

On this 3 day of May, 1994, before me personally appeared Thomas Curry known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

Deborah A. DeJesus

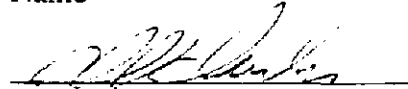
DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County 9/1
Commission Expires January 24, 1995

2. Respondents be and hereby are liable in the amount of \$1750.00 to the NASD.

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

Concurring Arbitrators' Signatures

Name



Thomas A. Turley
Industry Arbitrator

FILED
New York
1994
County
May 24, 1994

Date of Decision: May 3, 1994

STATE OF

COUNTY OF

On this 2 day of May, 1994, before me personally appeared
John Salas known to me to be the individual described in and
who executed the foregoing instrument and duly acknowledged to me that he/she
executed the same.

Deborah A. DeJesus

DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County
Commission Expires January 24, 1996

2. Respondents be and hereby are liable in the amount of \$1750.00 to the NASD.

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

Concurring Arbitrators' Signatures

Name

John W. Belash

John W. Belash, Esq.

Chairperson - Industry Arbitrator

Date of Decision: ~~21 April 1994~~

NASD Date of Decision: May 3, 1994