

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

David Arthur Kliff

93-01928

Name of Respondents

LaSalle Street Securities, Inc. &  
Jack McDermott

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**REPRESENTATION OF PARTIES**

For Claimant at the hearing: Jeffrey B. Kelvin, Esq., Financial Planners Assistance, Plymouth Meeting, Pennsylvania.

For Respondents at the hearing: David A. Genelly, Esq. of Fishman & Merrick, P.C., Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed: May 21, 1993. Answer To Counterclaim, Motion To Dismiss and Motion For Default Judgment against Respondent John McDermott filed: August 30, 1993. Claimants' Submission Agreement signed on: April 13, 1993.

Joint Statement of Answer, Counterclaim, and Motion To Dismiss filed by Respondents on: August 13, 1993. Respondent, LaSalle Street Securities, Inc.'s Submission Agreement signed on: August 11, 1993. Respondent, Jack McDermott's Submission Agreement signed on: August 26, 1993.

**HEARING INFORMATION**

Hearing date: April 14, 1994 for two (2) sessions.

Hearing Location: Chicago, Illinois.

### **CASE SUMMARY**

Claimant, David Arthur Kliff ("Kliff") alleged that Respondents, LaSalle Street Securities, Inc. ("LaSalle") and John McDermott ("McDermott") are liable for breach of the Independent Correspondent Sales Agreement ("the Agreement") which was signed during his employment with LaSalle. Kliff alleged that LaSalle breached the Agreement because they had improperly withheld notice of Kliff's termination and failed to advise him in a timely fashion that his registered representative status was being terminated early. Kliff further alleged that as a result of LaSalle's breach of the Agreement, he incurred damages precipitated by the confusion and inability to become associated with his new broker-dealer. Kliff also alleged that LaSalle negligently and improperly dropped Kliff's Series 26 license when he initially became a registered representative of LaSalle.

In their Answer to the Statement of Claim, LaSalle and McDermott denied that they breached any Agreement with Kliff. LaSalle stated Kliff knew that if registration payment was not received by December 31, 1992, his registration would not be renewed. LaSalle further stated that Kliff knew LaSalle would not allow Kliff to park his Series 26 license with LaSalle and that NASD rules prevented LaSalle from doing so.

In its counterclaim, LaSalle requested its attorneys' fees and costs in defending this action pursuant to the Agreement.

Kliff, in his reply to the counterclaim, stated that the Agreement does not provide for indemnification for this particular matter.

In its Motion To Dismiss, McDermott alleged that he has no individual liability in this matter and pursuant to Section 16 of the Code, he should be dismissed as a party.

In its Reply to the Motion To Dismiss, Kliff stated McDermott is also individually liable in that he was responsible for the series of events that caused Kliff to sustain damages.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$150,000.00 plus punitive damages in the amount of \$350,000.00. Claimant also requested that the counterclaim be denied.

Respondents LaSalle Street Securities, Inc. and Jack McDermott requested that the Statement of Claim be denied and that they be awarded their attorneys' fees and costs.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties present at the hearing have agreed that the Award in this matter may be executed by 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 original remains 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:

**Statement of Claim**

1. The Claimant, David Arthur Kliff's request for damages is denied;
2. The Claimant, David Arthur Kliff's request for punitive damages is denied;
3. Each of the parties shall bear their own costs and expenses other than those specifically enumerated for herein;

**Counterclaim**

4. Claimant/Counterrespondent, David Arthur Kliff, shall be and hereby is liable for, and shall pay to the Respondent/Counterclaimant, LaSalle Street Securities, Inc., attorney's fees in the amount of Five Thousand Dollars (\$5000.00);

**Respondent McDermott's Motion To Dismiss**

5. Respondent Jack McDermott shall be dismissed as a Respondent in this arbitration.

**FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

2 hearing sessions X \$750.00 = \$1500.00

Pursuant to Section 44(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$500, and shall retain the hearing session deposit in the amount of \$750 previously paid to the NASD by the Claimant.

The NASD shall retain the nonrefundable filing fee in the amount of \$250, and shall refund the hearing session deposit in the amount of \$600 previously paid to the NASD by Respondent LaSalle Street Securities.

Additional forum fees in the amount of \$750 are assessed against Claimant David Kliff.

Additional Forum Fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

**By The Arbitration Panel:**

Dated:

4-14-94                      s/s    Kevin J. Conway, Esq.  
Kevin J. Conway, Esq.  
Presiding, Industry Arbitrator

5-3-94                      s/s    James A. Arpaia  
James A. Arpaia  
Industry Arbitrator

4-28-94                      s/s    Steven W. Satkamp  
Steven W. Satkamp  
Industry Arbitrator

Date Award Served By The NASD: 5-11-94