

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

First Albany Corporation

93-02093

Name of Respondent

Tracey Schusterman

REPRESENTATION

For Claimant First Albany Corporation ("Claimant"): Laura Hastings, Esq. and William Duker, Esq. of the law firm of Duker & Barrett.

For Respondent Tracey Schusterman ("Respondent"): Edward A. Friedman, Esq.

CASE INFORMATION

Statement of Claim filed: May 21, 1993.

Claimant's Submission Agreement signed on: May 20, 1993.

Statement of Answer filed by Respondent on: July 28, 1993.

Respondent's Submission Agreement signed on: July 22, 1993.

HEARING INFORMATION

Pre-Hearing Sessions:	February 22, 1994	-	One Session
	March 1, 1994	-	One Session

Hearing Date/Sessions:	March 8, 1994	-	Two Sessions
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Hearing Location: National Association of Securities Dealers, Inc. offices located in New York City, New York.

CASE SUMMARY

Claimant First Albany Corporation alleged that Respondent entered into an agreement with Claimant, whereby Claimant agreed to loan Respondent \$17,500.00 as an advance against a bonus to be paid to Respondent after one year of employment (the "1991 Agreement"). It was also alleged by the Claimant that the 1991 Agreement stated that the bonus to be paid to Respondent was an amount equal to twenty percent of Respondent's gross retail sales production from the commencement of employment through April 30, 1992, and that in the event Respondent ceased to be employed by First Albany Corporation for any reason, prior to April 30, 1995, Respondent agreed to immediately pay back to Claimant an amount termed the "Repayment Amount." Claimant also alleged that the repayment amount was defined in the 1991 Agreement as "a percentage of the bonus or any advance thereon" which had been paid to Respondent as of the date she terminated her employment at First Albany Corporation and that interest was to be paid on the repayment amount "at a rate equal to the then highest published prime rate for New York City banks." Further, Claimant alleged that on or about April 28, 1992, Respondent was paid a bonus of \$46,610.00 (\$29,110.00 after deduction of the \$17,500.00 advance).

Claimant further alleged that on April 27, 1992, Respondent and Claimant entered into an agreement (the "1992 Agreement"), pursuant to which Respondent was to receive bonuses on April 27, 1993, April 27, 1994, and April 27, 1995, provided that Respondent was still employed at First Albany Corporation, "in an amount equal to the then due principal and interest payments", under a promissory note, which was also execute by Respondent on April 27, 1992 ("the Note"). The Note, Claimant alleged, states by its terms that in the event Respondent's employment with First Albany Corporation terminates for any reason, other than death or permanent disability, the principal amount, plus accrued interest shall be due and payable as of the date of termination.

Further, Claimant alleged that on or about April, 1993, Respondent informed the management of First Albany Corporation that she was voluntarily leaving Claimant's employ; that under the terms of the 1991 Agreement, the 1992 Agreement, and the Note, Respondent was required to refund a percentage of the sum which had been advanced to her on April 28, 1992; that in an April 21, 1993 letter Claimant advised Respondent that pursuant to the "Repayment Percentage" formula as set forth in the 1991 Agreement, Respondent immediately owed First Albany Corporation the sum of \$24,276.00; and that Respondent has failed and refused to refund the \$24,276.00 and is, therefore, in breach of the 1991 Agreement, the 1992 Agreement, and the Note.

Respondent maintained that the 1991 Agreement, 1992 Agreement, and the Note, do not include all of the agreements and understandings between Respondent and Claimant with respect to Respondent's employment by Claimant.

Respondent further maintained that prior to accepting an offer of employment from Claimant, Respondent received representations, promises and agreements from the Branch Manager of Claimant's mid-town office: that on the basis of the conditions, promises and agreements, Respondent agreed to accept Claimant's offer of employment on April 29, 1991; and that Respondent viewed such conditions, representations and agreements as part of the overall employment agreement governing the relationship between Claimant and Respondent.

It was further maintained by the Respondent that following July, 1992, working conditions at the Respondent's office began to change significantly, and certain conditions, promises and agreements were not complied with. Respondent also maintained that upon recognizing the detrimental changes, Respondent maintained that Respondent began discussions with her supervisors and other managers of First Albany Corporation during which she attempted to cause Claimant to honor its agreements and promises; that Respondent conveyed to her supervisors on a number of occasions between July, 1992 and April, 1993 that the conditions in Claimant's offices were such as to make it extremely difficult for her to perform her duties in a reasonable manner; and that Respondent was seriously considering a move to a different firm.

Respondent maintained that Respondent did not voluntarily leave the employ of Claimant because Claimant's breach of its promises and agreements with Respondent, including Claimant's agreement to provide certain high levels of working support and conditions, prevented Respondent from performing her duties in the manner and at the levels agreed upon by Claimant and Respondent, therefore, such conditions, together with Claimant's continuing inability or refusal to rectify them, caused Respondent to seek employment elsewhere.

RELIEF REQUESTED

Claimant requested the panel issue an arbitration award in Claimant's favor against Respondent as follows: (1) damages in the amount of \$24,276.00, together with interest at a rate equal to the then highest published prime rate for New York City banks; (2) awarding all expenses paid or incurred by Claimant in enforcing its right to a partial refund of the advance, including but not limited to reasonable attorneys' fees incurred in bringing and resolving this action until the refund and other amounts due are fully paid; (3) awarding Claimant all other costs and disbursements, and granting Claimant such other and further relief as this arbitration panel may deem just and proper.

Respondent requested that the panel issue an award in favor of Respondent against Claimant as follow: (1) dismissing Claimant's claim for damages and interest, or alternatively, determination of a fair and equitable settlement between Respondent and Claimant; (2) awarding all expenses paid or incurred by Respondent in defending her rights under her employment agreement, including but not limited

to reasonable attorneys' fees incurred in answering and resolving this action until final resolution of this dispute; and (3) awarding Respondent all other costs and disbursements, and granting Respondent such other and further relief as this arbitration panel may deem just and proper.

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. Respondent be and hereby is liable to the Claimant in the sum of \$22,280.00, inclusive of pre-judgment interest.
2. Respondent be and hereby is liable to the Claimant in the sum of \$4,375.00 representing attorneys' fees, pursuant to the terms agreed to by the parties under the promissory note.
3. Respondent be and hereby is liable and shall pay to the Claimant post-judgment interest on the outstanding balance of \$23,380.00, (\$22,280.00 plus \$1,100.00) which will accrue at the simple rate of 6.5% per annum commencing sixty (60) days from the date of the decision if the decision is not paid within thirty (60) days of the date of the decision.
4. Each party shall bear their respective costs, except that Respondent shall reimburse the Claimant \$1,100.00 previously paid by the Claimant to the NASD.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

2 pre-hearing conferences X \$300.00 = \$600.00 balance due.

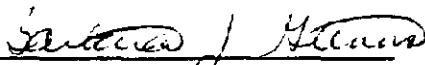
2 sessions X \$600 = \$1,200 minus hearing session deposit of 600 = \$ 600 balance due.


TOTAL FEES DUE = \$1200.00

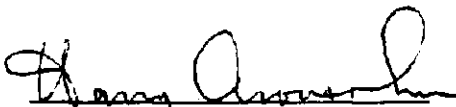
Respondent be and hereby is liable and shall pay to the NASD the sum of \$1200.00 to represent forum fees.

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

Concurring Arbitrators' Signatures
Name


Barbara J. Gleens, Esq.
Chairperson - Industry Arbitrator


Michael G. Schwartz
Industry Arbitrator


Harry Aronsohn
Industry Arbitrator

Date of Decision: April 11, 1994

STATE OF NEW YORK

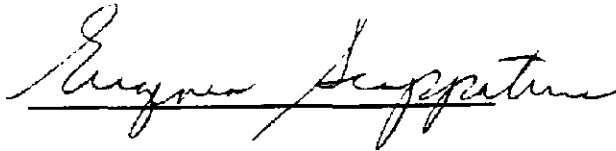
COUNTY OF NEW YORK

On this 30 day of February, 1994, before me personally appeared BALBAC J. LUCENIS 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 4 day of April, 1994, before me personally appeared Michael Schwartz 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.



EUGENIA SCAPATTON
Notary Public, State of New York
No. 24-5004003
Qualified in Kings County
Commission Expires Nov. 18, 1994

STATE OF

COUNTY OF

On this 20 day of March, 1994, before me personally appeared Walter L. LORCH 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
Notary Public, State of New York
No. 02DE5022979

Qualified in New York County
Expires January 24, 1995