

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant/Counter-Respondent

Daniel C. Lucas

93-02850

Name of Respondents/Counter-Claimants

Robert W. Baird & Co., Inc.;
William Parse;
Stephen John Timyan

REPRESENTATION

For Claimant/Counter-Respondent: Daniel G. Lucas ("Lucas") was represented by Bruce M. Bieneman, Esq. of Cholette Perkins & Buchanans, S.C., located in Grand Rapids, Michigan.

For Respondents/Counter-Claimants: Robert W. Baird & Co., Inc. ("Baird & Co."), William Parse ("Parse") and Steven John Timyan ("Timyan") were represented by Gregory G. Wille, Esq. of Wren & Wille, located in Milwaukee, Wisconsin and Deborah Fabritz, Esq. of Robert W. Baird & Co., Inc., Milwaukee, Wisconsin.

CASE INFORMATION

Statement of Claim filed: July 22, 1993.

Claimant/Counter-Respondent's Submission Agreement signed on: September 24, 1993.

Statement of Answer and Counterclaim filed by Respondent Baird & Co., Parse and Timyan on: November 18, 1993.

Respondent/Counter-Claimant Baird & Co.'s Submission Agreement signed on: November 17, 1993 by Deborah Fabritz, Associate General Counsel and Vice President, Robert W. Baird & Co., Incorporated.

Respondent Parse's Submission Agreement signed on: November 17, 1993.

Respondent Timyan's Submission Agreement signed on: November 17, 1993.

Claimant/Counter-Respondent's Amended Statement of Claim filed: July 25, 1994.

Supplemental Response to Statement of Claim filed by Respondents/Counter-Claimants on: July

25, 1994.

Claimant/Counter-Respondent's Answer to Second Counterclaim filed on: July 27, 1994.

HEARING INFORMATION

Pre-Hearing Conference: July 20, 1994 for One (1) session before One (1) arbitrator;
August 19, 1994 for One (1) session before One (1) arbitrator.

Hearing Dates/Sessions: September 1, 1994 for Two (2) sessions;
September 2, 1994 for Two (2) sessions;
November 15, 1994 for Two (2) sessions;
November 16, 1994 for One (1) session.

Hearing Location: Southfield, Michigan.

CASE SUMMARY

Claimant Lucas alleged that Respondents, individually and collectively, engaged in the following injurious conduct:

1. Wrongfully discharged him from his employment at Baird & Co.;
2. Slandered Lucas by verbally accusing him of being a thief;
3. Libeled Lucas by listing three false and libelous reasons for his discharge on Lucas' Form U-5, including that he had entered into an options trade on his account without the ability to pay for it when in fact he had accounts with sufficient capital to pay for the trade; failed to keep established business hours, an allegation which was used to cover-up that the discharge was the result of a fear that Lucas would leave to go to another broker; and that Lucas was the subject of a customer complaint for unauthorized trading, involving a trade which occurred 15 months prior to his termination; and
4. Caused Lucas to enter into two promissory notes under false pretenses for payment of funds lost in options transactions.

Respondents denied the material allegations of the Statement of Claim, alleging that:

1. Lucas' Statement of Claim sets forth no basis upon which his firing can constitute a wrongful discharge: it was not in breach of an employment contract;

it was not in violation of any law prohibiting discriminatory employment practices; and it was not in retaliation for Lucas' exercise of a protected right or contrary to public policy. Respondents simply exercised their right to terminate an at will employee for performance which was below required standards;

2. Respondents oral and written communications do not constitute defamation. The reasons stated for the termination were true; a discussion of the reasons for the termination within Lucas' office does not constitute "publication" under the law of defamation; and communicating the reasons for termination on the required Form U-5 falls within the protection of the qualified privilege which attaches to communications intended to protect an important interest of the recipient or a third person and to whom there is owed a legal duty to make the communication; and

3. The two promissory notes were not given under false pretenses or induced by fraud, but were given to reflect the obligation under specified terms to repay funds advanced by Baird & Co.

In addition, Baird & Co. filed a counterclaim, seeking the sums which remained due and unpaid on the promissory notes.

In his Amended Statement of Claim, Lucas alleged that he was discharged in retaliation for a mistaken belief that he was going to leave Baird & Co. to go to another brokerage firm, taking Baird account executives with him, and because he was aware of serious regulatory problems involving Timyan and Parse. In addition, Lucas alleged that Respondents communicated the false reasons for his termination to potential employers and his customers. Respondents denied the allegations of the Amended Statement of Claim.

In the Supplemental Response to the Statement of Claim, Baird & Co. asserted a second counterclaim, alleging that Baird & Co. had settled an arbitration claim with one of Lucas' customers who complained of his handling of the account and requested indemnification for the sum paid in settlement. Lucas denied the allegations of the second counterclaim, alleging that he had properly and responsibly rendered investment services to the customer's account while at Baird & Co. and that the idea for the claim was planted in the customer's mind to use the payment as evidence of why Lucas was discharged.

RELIEF REQUESTED

Claimant/Counter-Respondent Lucas requested entry of an award against Respondents/Counter-Claimants for actual damages in a sum in excess of \$10,000.00 and dismissal of the Counterclaim against him.

Respondents/Counter-Claimants requested entry of an award dismissing the claim against themselves and awarding damages from Lucas in the sum of \$10,746.00 as actual damages for the sums due on the two promissory notes, plus interest from May 12, 1993 at 10% per annum; \$29,000.00 in actual damages for indemnification of the settlement alleged in the second counterclaim; and attorneys' fees and costs.

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 and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim and Amended Statement of Claim of Claimant/Counter-Respondent Daniel C. Lucas are hereby dismissed with prejudice and denied in the entirety;
2. In regard to the Counterclaim asserted by Respondent/Counter-Claimant Robert W. Baird & Co., Inc., Claimant/Counter-Respondent Daniel C. Lucas is liable for and shall pay to Respondent/Counter-Claimant Robert W. Baird & Co., Inc. the sum of \$11,405.00, plus interest in the sum of \$1,727.94;
3. The second counterclaim for indemnification is hereby dismissed with prejudice and denied in its entirety;
4. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
5. Any relief not specifically granted is hereby denied.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) prehearing sessions with One (1) arbitrator x \$300.00 per session = \$600.00; Seven (7) hearing sessions x \$600.00 per session = \$4,200.00; Total Forum Fees = \$4,800.00.

The National Association Of Securities Dealers, Inc. shall retain the \$500.00 claim filing fee and

the \$600.00 hearing session deposit previously deposited by the Claimant/Counter-Respondent Daniel C. Lucas. In addition, the NASD shall retain the \$500.00 claim filing fee and the \$600.00 hearing session deposit previously deposited by the Respondents/Counter-Claimants Robert W. Baird & Co., Inc., William Parse and Steve John Timyan. Claimant/Counter-Respondent Daniel C. Lucas is liable for and shall pay to the NASD additional forum fees in the sum of \$1,800.00. Respondents/Counter-Claimants Robert W. Baird & Co., Inc., William Parse and Steve John Timyan are jointly and severally liable for and shall pay to the NASD additional forum fees in the sum of \$1,800.00.

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

Concurring Arbitrators' Signatures

Name	Date
<u>/s/ Jack J. Mazzara, Esq.</u> Jack J. Mazzara, Esq. Industry Arbitrator Chairperson	<u>March 1, 1995</u>
<u>/s/ John R. Main</u> John R. Main Industry Arbitrator	<u>February 25, 1995</u>
<u>/s/ Frank G. Bank</u> Frank G. Bank Industry Arbitrator	<u>February 15, 1995</u>

For NASD Use Only

Date of Decision: March 3, 1995