

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the matter of the Arbitration Between

**Name of Claimant**

David G. Cade

NASD Arbitration

No.93-03392

**Name of Respondent**

Zions First National Bank

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**REPRESENTATION**

For Claimant: Daniel Robert Bartley, Esq., Larkspur, California, and Sharon Green, Esq., Las Vegas, Nevada.

For Respondent: T. Richard Davis, Esq., and James R. Holbrook, Esq., Callister Nebeker & McCullough, Salt Lake City, Utah, and John P. Mullen, Esq., Anderson & Karrenberg, Salt Lake City, Utah.

**CASE INFORMATION**

Statement of Claim filed: August 26, 1993

Claimant's Submission Agreement signed: August 26, 1993

Statement of Answer filed by Respondent: October 27, 1993

Respondent's Submission Agreement signed: October 27, 1993

Additional pleadings were subsequently filed, and the case went to hearing using as operative pleadings the Claimant's Second Amendment to Statement of Claim dated February 25, 1996, and Statement of Answer to Claimant's Second Amendment to Statement of Claim dated February 25, 1996.

**HEARING INFORMATION**

Pre-hearing telephone conferences were held as follows:

June 16, 1995 - 1 session  
March 14, 1996 - 1 session

The evidentiary hearing was held in Salt Lake City, Utah, as follows:

March 23, 1996 - 2 sessions  
March 24, 1996 - 2 sessions  
March 25, 1996 - 2 sessions  
March 26, 1996 - 2 sessions  
March 27, 1996 - 2 sessions  
March 28, 1996 - 2 sessions  
March 29, 1996 - 2 sessions

### **CASE SUMMARY**

Claimant alleged breach of contract, breach of the covenant of good faith and fair dealing, fraud, breach of fiduciary duty, and quantum meruit arising out of Claimant's claim for unpaid commissions earned while in the employ of Respondent on the purchase and sale of financial services products, including but not limited to Small Business Administration (SBA) loans and their component parts. Claimant further alleged that Respondent engaged in activities to hide from him the true amounts of commissions due him and to deprive him of commissions, by selling inventory on which Claimant should have received commissions at below-market rates, thus precluding Claimant's entitlement to commission income.

Respondent denied all allegations of wrongdoing, and asserted that Claimant had been paid commissions in accordance with the terms of the employment agreement between the parties, and that any claims for commissions on (1) any interest earned by Respondent on assets held by Respondent and purchased through Claimant's actions, or (2) any transaction not made by Claimant were outside the terms of the employment contract.

### **RELIEF REQUESTED**

Claimant requested damages of between \$3,000,000 to \$9,000,000, according to proof, plus interest, punitive damages of \$20,000,000, attorney's fees and costs of arbitration.

Respondent requested dismissal of all claims, and an award of costs of arbitration.

### **OTHER ISSUES CONSIDERED AND DECIDED**

This claim was originally filed in the Third Judicial District Court of Salt Lake County, Utah, Civil No. 910904395, and was removed to arbitration by Order of the Court, Judge Homer

P. Wilkinson, dated August 3, 1993.

The parties have agreed that the Award in this matter may be executed in either 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. On the causes of action alleging breach of contract and interest under state law, Respondent is liable for and shall pay to Claimant the sum of \$460,823.
2. All other claims including the claim for punitive damages, are dismissed.
3. The parties shall bear their respective costs, including attorney's fees.

### **FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the NASD shall retain Claimant's \$500 non-refundable filing fee.

Forum fees are to be divided between the parties as follows:

Total fees:	
2 pre-hearing telephone conferences @ \$300	\$ 600
14 hearing sessions @ \$1500/session	\$21,500
	<u>\$21,600</u>
Claimant's one-half share	\$10,800
Credit for deposit	<u>\$ 1,000</u>
Balance Due	<u>\$ 9,800</u>
Respondent's one-half share	<u>\$10,800</u>

Fees are payable to the NASD, Inc.

### **ARBITRATORS**


Name	Public / Industry
Allan B. Currie	Industry

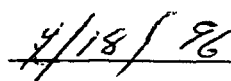
Blake Weston  
Bryan K. Devendorf

Industry  
Industry

Concurring Arbitrators' Signatures

Dated:

  
Allan B. Currie

  
4/18/96

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Blake Weston

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Bryan K. Devendorf

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Date Served: 4/24/96

Blake Weston  
Bryan K. Devendorf

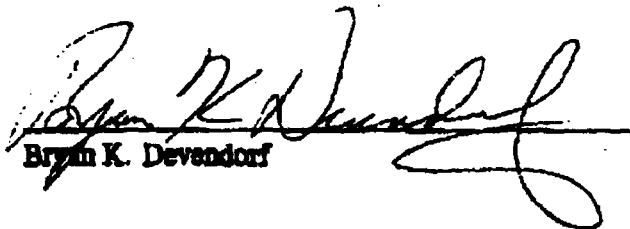
Industry  
Industry

Concurring Arbitrators' Signatures

Dated:

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Allen B. Currie

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Blake Weston

  
Bryan K. Devendorf

4-23-96

Date Served: 4/24/96

Blake Weston  
Bryan K. Devendorf

Industry  
Industry

Concurring Arbitrators' Signatures

Dated:

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Allan B. Currie

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*Blake Weston*

Blake Weston

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*4/18/96*

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Bryan K. Devendorf

Date Served: 4/24/96