

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant/Counter-Respondent

Gordon P. Knuth

93-04168

Name of Respondents/Counter-Claimant

Dean Witter Reynolds, Inc.;
Thomas P. Ryan

REPRESENTATION

For Claimant/Counter-Respondent: Gordon P. Knuth ("Knuth") was represented by Hayward Richard Pressman, Esq. of New York, New York.

For Respondents/Counter-Claimant: Dean Witter Reynolds, Inc. ("Dean Witter") and Thomas P. Ryan ("Ryan") were represented by Janie S. Mayeron, Esq. of Popham Haik Schnobrich & Kaufman, Ltd., located in Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: October 11, 1993.

Claimant/Counter-Respondent's Submission Agreement signed on: November 4, 1993.

Statement of Answer and Counterclaim filed by Respondent/Counter-Claimant Dean Witter on: February 11, 1994.

Respondent/Counter-Claimant Dean Witter's Submission Agreement signed on: February 11, 1994 by Erica Bunin, First Vice President and Assistant General Counsel, Dean Witter Reynolds, Inc.

Claimant/Counter-Respondent's Reply to Counterclaims filed on: February 21, 1994.

Claimant/Counter Respondent's Amended Statement of Claim filed on: July 12, 1994.

Answer to Amended Statement of Claim and Statement of Counterclaim filed by Respondents/Counter-Claimant Dean Witter and Reynolds on: September 1, 1994.
Claimant/Counter-Respondent's Answer to Counterclaim filed: September 12, 1994.

HEARING INFORMATION

Pre-Hearing Conference: May 1, 1995 for One (1) session before the Full Panel;
May 3, 1995 for One (1) session before One (1) arbitrator.

Hearing Dates/Sessions: June 20, 1995 for Two (2) sessions;
June 21, 1995 for Two (2) sessions;
June 22, 1995 for Two (2) sessions;
June 23, 1995 for Two (2) sessions;
June 26, 1995 for Two (2) sessions;
June 27, 1995 for Two (2) sessions;
June 28, 1995 for Two (2) sessions;
June 29, 1995 for Three (3) sessions; and
June 30, 1995 for Two (2) sessions.

Hearing Location: Milwaukee, Wisconsin.

CASE SUMMARY

Claimant/Counter-Respondent Knuth alleged that Respondents/Counter-Claimant Dean Witter and Ryan wrongfully terminated Knuth's employment and deliberately damaged his reputation to gain Knuth's clients. Specifically, Knuth alleged that:

1. In September of 1991, Ryan, a branch manager motivated by jealousy, falsely accused Knuth of sexually harassing a co-worker. Ryan terminated Knuth's employment. The co-worker's lawsuit was dismissed after the co-worker admitted, in effect, that Knuth did not engage in sexual harassment;
2. As a result of that suit's dismissal, Dean Witter amended the U-5 termination notice by removing the sexual harassment accusation and falsely indicated that Knuth's termination was the result of Knuth selling insurance products not approved by Dean Witter; and
3. Dean Witter told Knuth's clients that Knuth had sexually harassed a co-worker and engaged in questionable business practices. This was a systematic effort to

encourage Knuth's clients to remain with Dean Witter.

Based on these allegations Knuth asserted the following claims: breach of contract; defamation, libel and slander; tortious interference with Knuth's business relationships; and intentional infliction of emotional distress.

Respondents/Counter-Claimant Dean Witter and Ryan denied any liability to Claimant, stating that Knuth demonstrated a pattern of inappropriate behavior during his employment with Dean Witter in violation of Dean Witter's policies. Specifically, Dean Witter and Ryan alleged that:

1. In 1987 Knuth was suspended and fined for sending unauthorized and misleading information to clients;
2. On numerous occasions investors called Knuth's supervisors to complain that Knuth continually harassed them;
3. Knuth continually harassed a co-worker culminating in a sexual harassment suit; and
4. Subsequent to his termination Dean Witter discovered that during Knuth's employment he sold unauthorized life insurance products. The NASD censured and fined Knuth for selling these products.

Further, Dean Witter and Thomas Ryan asserted several affirmative defenses, which included:

1. The claims for defamation, libel and slander are barred by the statute of limitations;
2. The claims are barred by the doctrine of unclean hands; and
3. The losses suffered due to Knuth's termination from Dean Witter, are the result of his own misconduct.

Dean Witter asserted a counter-claim alleging breach of the non-compete covenant; intentional interference with Dean Witter's business relations; breach of Knuth's employment contract; and breach of a common law duty of loyalty.

In Knuth's answer to the counter-claim, Knuth denied all the material allegations stating Respondents breached the employment agreement between Knuth and Respondents, and therefore, Knuth is relieved of all obligations under the agreement.

RELIEF REQUESTED

Claimant requested entry of an award against Respondents as follows:

1. For breach of contract, damages totaling approximately \$61,045.52 for "Residual Compensation" and "Productivity Bonuses" due Knuth in 1991;
2. \$1,000,000.00 in damages for defamation, libel and slander;
3. \$1,000,000.00 in damages for tortious interference with business relationships;
4. \$18,556.91 for indemnification pursuant to Section 180.0851(1) of the Wisconsin Statutes for expenses incurred in defending the lawsuit ;
5. Medical expenses of \$2,000.00 and damages of \$1,000,000.00 for intentional infliction of emotional distress;
6. The sum of \$13,000.00 for thirteen separate violations of the State of Wisconsin law providing for liquidated damages when an employer refuses to pay wages due an employee; and
7. Cost and expenses, including attorneys' fees, pursuant to the law of the State of Wisconsin.

Respondents requested that the claims be denied in all respects. In addition, Dean Witter requested entry of an award against Knuth for unspecified damages for breach of contract, breach of the duty of loyalty, and intentional interference with Dean Witter's business relations, including attorneys' fees and costs.

Knuth requested that the counterclaim be dismissed and denied.

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 hearing, the Parties agreed to the simultaneous filing of post-hearing briefs. On July 20, 1995, the Respondents filed a Motion to File a Reply Brief. On July 21, 1995, the Claimant filed a

Response. A reply was filed on July 26, 1995. On July 26, 1995, the Panel determined that the Motion would be denied.

On July 27, 1995, Respondents filed a Motion to Reconsider the Panel's decision to denying further post hearing submissions. The Claimant responded on July 28, 1995. On August 28, 1995, the Panel determined that the Motion would be denied.

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 claims filed by Claimant/Counter-Respondent Gordon P. Knuth are dismissed with prejudice and denied in their entirety;
2. Claimant/Counter-Respondent Gordon P. Knuth is liable for and shall pay to Respondent/Counter-Claimant Dean Witter Reynolds, Inc. the sum of \$40,000.00 for the counterclaims based upon Claimant's outside insurance activities;
3. In addition, Claimant/Counter-Respondent Gordon P. Knuth is liable for and shall pay to Respondent/Counter-Claimant Dean Witter Reynolds, Inc. the sum of \$10,000.00 as attorneys' fees. In deciding to award attorneys' fees, the Panel considered the arguments of the parties and the authorities in the post-hearing briefs, and determined that authority existed for awarding attorneys' fees to the Respondents/Counter-Claimants;
4. Any additional cost of arbitration, including additional attorneys' fees, shall be borne by the party incurring the cost; and
5. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) prehearing conference before the full panel x \$1,000.00 = \$1,000.00; One (1) prehearing before One (1) arbitrator x \$300.00 per session = \$300.00; Nineteen (19) hearing sessions x \$1,000.00 per session = \$19,000.00; Total forum fees = \$20,300.00.

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

the \$1,000.00 hearing session deposit previously deposited by the Claimant/Counter-Respondent Gordon P. Knuth. Claimant/Counter-Respondent Gordon P. Knuth is liable for and shall pay to the NASD the sum of \$19,300.00 as forum fees. In addition, the NASD shall retain the \$500.00 claim filing fee and refund the \$750.00 hearing session deposit previously deposited by the Respondents/Counter-Claimant Dean Witter Reynolds, Inc. and Thomas P. Ryan.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Herbert Neuer, Esq.

September 20, 1995

Herbert Neuer, Esq.

Public Arbitrator

Chairperson

/s/ Leonard G. Levenson

September 18, 1995

Leonard G. Levenson

Public Arbitrator

/s/ Ramona V. Larson

September 19, 1995

Ramona V. Larson

Industry Arbitrator

For NASD Use Only

Date of Decision: September 21, 1995