

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Kurt Traulsen

93-05336

Name of Respondent

Cantor Fitzgerald Securities Corp.

REPRESENTATION

For Claimant Kurt Traulsen ("Claimant") appeared Gerald N. Daffner, Esq., a sole practitioner located in New York, New York.

For Respondent Cantor Fitzgerald Securities Corp. ("Respondent") appeared Alan Kaminsky, Esq. from the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker located in New York, New York.

CASE INFORMATION

Statement of Claim filed: December 22, 1993.

Claimant's Submission Agreement signed on: December 22, 1993.

Statement of Answer filed: March 18, 1993.

Respondent did not execute a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions:	January 19, 1995	-	Two Sessions
	March 3, 1995	-	Two Sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that he was an employee of Respondent for approximately six years and that, immediately prior to his termination, he was a Vice President and a broker in Respondent's Government Securities Department. Claimant further alleged that, during the period of October 1, 1991 through September 30, 1992, his employment was pursuant to an employment agreement. Claimant also alleged that, pursuant to the employment agreement, he was to receive an annual salary of \$150,00.00 and an annual bonus of \$250,00.00.

Claimant alleged that, prior to his termination, discussions were held between the parties as to his continued employment and that it was agreed that a new two year employment agreement would be executed, providing for substantially the same compensation under the existing employment agreement. In addition, Claimant alleged that Respondent purchased Claimant's house in September, 1992 so that he could moved into New York City and be closer to Respondent's office.

Claimant alleged that Respondent did not offer him a two year employment agreement and that, on December 1, 1992, Respondent terminated his employment. Claimant also alleged that Respondent refused to pay him his \$250,00.00 bonus, pursuant to the expired employment agreement, unless he signed a general release. Claimant further alleged that he executed the release because both he and his wife were unemployed.

Respondent maintained that it treated Claimant in a totally fair and proper manner during the term of his employment. Respondent further maintained that during the term of the employment agreement, Claimant began to exhibit erratic behavior, due to the recent death of his mother and the stress of the job. Respondent maintained that in order to lend assistance to Claimant it allowed him to take three consecutive weeks of vacation and also purchased Claimant's house to allow him to relocate to New York City.

Respondent maintained that, notwithstanding the change in Claimant's commuting situation, Claimant continued to exhibit erratic behavior in the presence of others and, therefore, a new employment agreement was not presented to Claimant. Respondent further maintained that Claimant's behavior had not improved and, therefore, on December 1, 1992, Claimant's employment was terminated.

Respondent maintained that it extended generous severance benefits to Claimant although it had no obligation to do so. Respondent also maintained that as a result of meetings with Claimant and his attorney, Claimant executed a general release, under which Claimant received the \$250,000.00 employment contract bonus in exchange for releasing Respondent from any and all claims associated with Claimant's employment.

RELIEF REQUESTED

Claimant requested damages in the amount of \$800,000.00, representing the salary and bonus which would have been applicable under a two-year employment agreement. In addition, Claimant requested punitive damages if warranted by the evidence.

Respondent requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The panel made the following rulings as to Respondent, who filed an answer in this arbitration, but failed to file a properly executed Submission Agreement:

1. Pursuant to Section 1 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy and specifically as it related to Respondent.
2. The panel found that Respondent was a member of the NASD at the time the controversy arose. Consequently, the panel found personal jurisdiction over Respondent, pursuant to Section 8(a) of the Code.
3. In view of (2) above, the panel found that Respondent was required to file with the NASD an executed submission agreement, pursuant to Section 25(b) of the Code, and that the NASD properly served the Statement of Claim upon Respondent, pursuant to Section 25(a) of the Code.

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

1. All claims against Respondent be and hereby are dismissed.
2. Claimant's request for punitive damages is denied.
3. Each party shall bear their respective costs, including attorney's fees, except that Respondent is liable and shall pay to Claimant

the sum of \$500.00 to reimburse Claimant for the fees he previously paid to the NASD.

4. All other claims be and hereby are denied.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the panel has assessed the following forum fees:

Filing fee:	\$ 500.00
4 Sessions x \$1000.00:	<u>\$4,000.00</u>
Total forum fees assessed:	\$4,500.00
minus filing fee deposited by Claimant:	<u>\$ 500.00</u>
Total forum fees outstanding:	\$4,000.00

The panel has assessed 100% of the forum fees against Respondent because it failed to produce a witness, the President of Cantor Fitzgerald Securities Corp., pursuant to a subpoena issued by Claimant's attorney as provided for under Section 33(a) of the NASD Code of Arbitration Procedure. Therefore, Respondent be and hereby is liable for the sum of \$4,500.00, representing the total amount of forum fees assessed. Respondent is liable and shall pay to the NASD the sum of \$4,000.00, representing the outstanding balance of forum fees due and owing to the NASD.

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

ARBITRATOR'S SIGNATURES

/s/ _____
Marc R. Green, Esq.
Industry Chairperson

/s/ _____
Thomas M. Campbell, Esq.
Industry Arbitrator

/s/ _____
James J. Noone
Industry Arbitrator

Date of decision: May 10, 1995

STATE OF:

COUNTY OF: **ss:**

On this day of , 1995, before me personally appeared **Marc R. Green, Esq.** known and known to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

COUNTY OF: **ss:**

On this day of , 1995, before me personally appeared **Thomas M. Campbell, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

COUNTY OF: **ss:**

On this day of , 1995, before me personally appeared **James J. Noone** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.
