

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, REGULATION

In the Matter of the Arbitration Between

Name of Claimant

First Albany Corporation

vs.

Award No.
94-00038

Name of Respondent

Jonathan Lee

REPRESENTATION

For Claimant, First Albany Corporation ("Claimant"), appeared Joseph P. Carmichael, Esq. who is a sole practitioner at Salem, Massachusetts.

For Respondent, Jonathan F. Lee ("Respondent"), appeared Bruce W. Warren, Esq. of The Law Offices of Bruce W. Warren at Framingham, Massachusetts, for the first two hearings, January 2, 1996. Thereafter, Respondent appeared pro se.

CASE INFORMATION

Statement of Claim was filed on January 5, 1994.

Claimant's Submission Agreement was signed on December 28, 1993.

Statement of Answer was filed by Respondent on October 6, 1994.

Respondent's Submission Agreement was signed on October 20, 1994.

HEARING INFORMATION

Pre-Hearing Conference: None

Hearing Dates/Sessions:

March 21, 1996 - Two Sessions

May 28, 1996 - Two Sessions

All of the hearings were held at NASD, Inc. which is located 260 Franklin Street in Boston, Massachusetts.

CASE SUMMARY

Claimant alleged that it lent Respondent \$70,000.00 when he commenced his employment for Claimant.

Claimant further alleged that Respondent signed a promissory note which provides that the repayment of the principal amount of the loan would be due in three equal annual installments of \$23,333 each, together with accrued interest at the rate of 6.5% per annum. Claimant also alleged that, pursuant to the terms of the loan, the first installment was forgiven on December 7, 1993.

Claimant contended that Respondent resigned from his position shortly after the first installment was forgiven and that, pursuant to the terms of the promissory note, Respondent's resignation rendered the outstanding balance of the loan, \$46,667.00, to be due and payable immediately.

Claimant alleged that, on December 10, 1993, it made a written demand for payment of the outstanding balance of the loan and it has not received any responses from Respondent, regarding the demand letter, as of the filing date of this controversy.

Respondent alleged that Claimant breached its contractual obligation regarding the quality of the work environment, the support staff, the sales assistance, and the management support. Respondent cited two incidents which relate to such breaches. First, the Respondent contended that he was not given adequate office space and sales support. Second, the Respondent contended that the new management was non-supportive.

Respondent contended that, due to Claimant's incompetence and negligence, his clientele was severely undermined and most accounts were not transferred from his former employer, Shearson Lehman Inc. Respondent also alleged that Claimant negligently mislabelled the transferred accounts, particularly mutual fund accounts, and thus, caused grave confusion among his clients and himself. Respondent contended that his client base was further damaged as a result all of Claimant's negligence conducts.

Respondent further contended that Claimant's breach of contractual duty and its incompetence and negligence in transferring his clients from Shearson Lehman to Claimant's company so badly damaged his reputation as a broker that he had to quit his job in order to resurrect his career as a broker.

Respondent counterclaimed that Claimant breached the employment contract and constructively wrongfully discharged him.

RELIEF REQUESTED

Claimant requested \$46,667.00, which is the outstanding balance of the loan, together with prejudgment and post-judgment interest at the rate of 6.5% per annum. Claimant further requested reimbursement of filing fees, forum fees, costs and reasonable attorneys fees in the event that the matter is referred to an outside attorney for collection. Claimant also requested any further relief as the arbitrators may deem appropriate.

Respondent requested the arbitration panel to dismiss the case as its entirety. The Respondent also requested compensatory damages and punitive damages for breach of contract and constructive wrongful discharge.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Jonathan Lee is hereby liable to Claimant First Albany Corporation for a total amount of Fifty Three Thousand, Seven Hundred Ninety Dollars and Ninety Nine Cents (\$53,790.99) which includes the outstanding balance of the loan plus interest at 6.5% per annum.
2. Respondent Jonathan Lee's counterclaims for breach of contract and constructive wrongful discharge are denied in full.
3. Respondent Jonathan Lee is hereby responsible for Claimant First Albany Corporation's attorneys fees in the sum of Four Thousand, Five Hundred and Zero Cents (\$4,500.00).
4. All other requests are denied in full.

FORUM FEES

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

Claim Filing Fee:	\$500.00
Counter Claim Filing Fee:	\$500.00
Hearing Session Fees:	\$1200.00 (2 hearing sessions @ \$600.00 per session)
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Total Fees:	\$2,200.00

1. Claimant is assessed \$500.00 in claim filing fee.
2. Claimant is further assessed \$600 in hearing session fee. Claimant previously paid \$1,700.00 and is entitled to a refund of \$600.00.
3. Respondent is assessed \$500.00 for filing the counterclaim. Respondent is further assessed \$600.00 in hearing session fees. Respondent previously paid \$600.00 for postponement of hearings that were scheduled for January 2, 1996. Respondent also paid \$45.00 for duplication of the tapes. Balance due by Respondent is \$1,100.00. Respondent shall satisfy the fees assessed by reimbursing Claimant \$600.00 and by remitting the balance \$500.00 to the NASD.

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

ARBITRATION PANEL

Lucy J. Karl, Esq.	-	Public Chairperson
Brian W. McDonald	-	Industry Panelist
William C. Karros	-	Industry Panelist

Concurring Arbitrator's Signature

Lucy J. Karl
Lucy J. Karl, Esq.

NASD's Date of Decision: July 1, 1996

ARBITRATION PANEL

Lucy J. Karl, Esq.	-	Public Chairperson
Brian W. McDonald	-	Industry Panelist
✓ William C. Karros	-	Industry Panelist

Concurring Arbitrator's Signature


William C. Karros

NASD's Date of Decision: July 1, 1996

ARBITRATION PANEL

Lucy J. Karl, Esq.	-	Public Chairperson
Brian W. McDonald	-	Industry Panelist
William C. Karros	-	Industry Panelist

Concurring Arbitrator's Signature


Brian W. McDonald 6/18/96

NASD's Date of Decision: July 1, 1996