

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Michael A. Malamed

94-00095

Name of Respondent/ Third-Party Claimant

Chapdelaine Corporate Securities & Company, Inc.

Name of Third-Party Respondent

McFadden, Farrell & Smith, Inc.

Representation

For Claimant Michael A. Malamed ("Claimant") appeared George Brunelle, Esq. located in New York City, New York.

For Respondent Chapdelaine Corporate Securities & Company, Inc. ("Chapdelaine") appeared Jerome Kamerman, Esq. of the law firm of Kamerman & Soniker, P.C. located in New York City, New York.

For Third-Party Respondent McFadden, Farrell & Smith, Inc. ("McFadden") appeared Minna Schrag of the law firm of Proskauer Rose Goetz & Mendelsohn located in New York City, New York.

CASE INFORMATION

Claimant's statement of claim was filed on January 6, 1994 and Claimant's submission agreement was executed on January 13, 1994.

Respondent Chapdelaine's Statement of Answer, Counterclaim and Third-Party claim was filed on January 28, 1994 and the submission agreement of Respondent Chapdelaine was executed on January 25,

1994.

Claimant's reply to the Counterclaim asserted by Respondent Chapdelaine was filed on March 7, 1994.

Third-Party Respondent McFadden filed a Statement of Answer to the Third-Party claim on March 11, 1994. Third-Party Respondent McFadden did not execute a submission agreement.

HEARING INFORMATION

Hearing Dates/ Sessions:	April 19, 1994	-	2 Sessions
	April 20, 1994	-	2 Sessions
	April 21, 1994	-	2 Sessions

The hearing was held at the Merchant Club located in New York City, New York.

CASE SUMMARY

Claimant alleged that effective September 24, 1991, Claimant entered into an Employment/ Non-Competition Agreement with Respondent whereby Respondent would pay to Claimant a "signing bonus" in three annual installments, and Claimant would work for Respondent for three years. Claimant also alleged that if he were to resign voluntarily, or was dismissed for good cause, Claimant would refund the signing bonus pro rata.

Claimant further alleged that Claimant's activities for Respondent consisted of the purchase and sale of "intermediate bonds"; that during Claimant's employment with Respondent, major differences developed between Claimant and Respondent; and that the differences extended to matters of management philosophy, staffing and Claimant's own activities, particularly with regard to a request by Claimant that he be transferred from Respondent's intermediate bond department to its high-yield bond department.

Further, Claimant alleged that the friction between Claimant and Respondent rendered Claimant's continued employment by Claimant untenable; that Claimant resigned; and that Claimant received an offer of employment from Third-Party Respondent McFadden. It was also alleged by Claimant that in correspondence to Claimant dated December 10, 1993, Respondent demanded that Claimant remain unemployed until September 24, 1994, in all phases of the bond business in which Chapdelaine had been active; that Respondent threatened to institute litigation against McFadden if McFadden proceeded to employ Claimant; and that Respondent based its threats against Claimant and McFadden upon the "restrictive covenant" contained in Chapdelaine's 1991 agreement with Claimant.

Claimant alleged that after learning of Chapdelaine's threatening correspondence on December 10, 1993, Claimant offered on that same day, to pay Chapdelaine the sum of money that Chapdelaine demanded,

in exchange for prompt withdrawal of their objections to Claimant's employment by McFadden; that alternatively, Claimant requested that any differences between the parties be resolved through expedited arbitration before the NASD; and that Respondent Chapdelaine did not respond to Claimant's offer.

Respondent maintained that Claimant was employed by Respondent prior to its entering into the Employment/Non-Competition Agreement on September 14, 1991. It was maintained by the Respondent that the business of Respondent at that time was to act as a broker between other brokers, exclusively, in the re-marketing of corporate bonds and so-called government zeros.

Further, Respondent maintained that in addition to paying Claimant a salary aggregating \$656,941.00 for the years 1991, 1992, and 1993, Respondent paid Claimant an additional "signing bonus" in the amount of \$222,500.00 in consideration of Claimant's undertaking to abide by the covenants in the agreement, including that Claimant would not take employment with any company which acted as a broker between other brokers in the re-marketing of corporate bonds and so-called government zeros, and if Claimant did resign and take employment with a business which brokered products other than corporate zeros, Claimant would refund a pro-rata portion of the signing bonus.

As and for its Counterclaim, Respondent alleged that Claimant was obligated to remain employed with Respondent for a period of three years from September 24, 1991 until September 24, 1994; that Claimant resigned his employment from Respondent voluntarily on or about December 9, 1993; and that in accordance with the Employment Agreement, if Claimant voluntarily terminated his employment prior to the third anniversary date of the agreement, Claimant is required to refund a pro rata portion of the signing bonus, which amounts to \$59,384.00.

Respondent further alleged that notwithstanding Claimant's obligations under the Agreement, Claimant sought employment with a broker's broker, engaged in the re-marketing of corporate bonds and so-called government zeros, in direct violation of the agreement. Further, Respondent alleged that if the Agreement was invalid, and declared null and void, then Respondent is entitled to a full refund of the \$222,500.00 signing bonus received by Claimant.

As and for Respondent's Third-Party Claim, Respondent alleged that Third-Party Respondent McFadden was aware of Claimant's contractual obligation not to accept employment with a broker's broker, prior to September 24, 1994; that notwithstanding McFadden's knowledge of the Agreement between Claimant and Respondent, McFadden wrongfully interfered with Respondent's rights under the agreement by inducing Claimant to breach the Agreement; and that Claimant resigned his position with Respondent, due to McFadden's inducement to Claimant to breach the Agreement.

In reply to the counterclaims asserted by Respondent, Claimant

maintained that Claimant's obligation to remain employed by Respondent ended when Claimant's working conditions at the firm became unreasonable, in violation of the Agreement's implied condition of good faith, and that Claimant's termination was not voluntary, but a product of unreasonable conduct by Respondent. Further, Claimant maintained that Claimant will not engage in the same business activities at McFadden which he performed at Chapdelaine.

Third-Party Respondent McFadden denied all allegations of wrongdoing as set forth in the Third-Party claim. McFadden maintained that Claimant advised McFadden of Claimant's dissatisfaction with his working conditions at Chapdelaine and Chapdelaine's refusal to let Claimant work with high-yield bonds. McFadden further maintained that when McFadden offered to employ Claimant, McFadden was not aware of the terms of any agreement Claimant had with Chapdelaine. Further, McFadden maintained that when McFadden learned that Chapdelaine objected to McFadden's employing Claimant, McFadden first refused to employ Claimant until Claimant and Chapdelaine resolved their dispute. It was further maintained that only when it became clear that Chapdelaine's objection was frivolous and that the dispute would not be resolved quickly, did McFadden employ Claimant.

RELIEF REQUESTED

Claimant requested that the panel render an award in Claimant's favor and against Chapdelaine: (1) Declaring Claimant's immediate employment by Third-Party Respondent McFadden as a bond broker's broker, lawful and that any contrary provision of the agreement of September 24, 1991 is unenforceable and void; (2) Awarding damages in the amount of \$500,000.00 or such other and further amounts as proofs submitted at the arbitration hearing may establish; (3) Awarding lawful interest; (4) Awarding reasonable counsel fees incurred in connection with this proceeding; and (5) Awarding such other and further relief as the arbitrators may deem just and proper.

Respondent Chapdelaine requested an award in its favor and against Claimant Malamed as follows: (1) Declaring that Malamed was in violation of the Agreement between Malamed and Chapdelaine dated September 24, 1991, and that such Agreement is enforceable and lawful; (2) Denying any monetary damages to Claimant; (3) Awarding to Respondent \$59,384.00 for the balance of Claimant's signing bonus; (4) Or, in the alternative, awarding the entire \$225,500.00 signing bonus to Respondent by ordering Claimant to repay same, if the panel finds that the agreement was invalid; (5) Granting Respondent an award of \$294,320.00 on its Third-Party Claim against McFadden, plus a sum equal to all fees or commissions earned by McFadden prior to September 25, 1994 as a result of McFadden's employment of Claimant, plus all fees and commissions earned by Claimant in such period, to the extent that such fees and commissions exceed \$294,320.00; (6) Denying any other relief

sought by Claimant Malamed; (7) Awarding to Respondent its reasonable attorneys' fees, interest, the costs of this arbitration and all other related expenses and disbursements; and (8) Awarding to Respondent such other and further relief as may be deemed just, proper and equitable.

Claimant requested that the arbitrators dismiss in its entirety Respondent's counterclaims against Claimant, award Claimant the reasonable costs and disbursements of this proceeding, and grant such other and further relief as the arbitrators may deem just and proper.

Third-Party Respondent McFadden requested that the panel dismiss in its entirety Chapdelaine's Third-Party Claim, award McFadden the reasonable costs and disbursements of this proceeding, and grant such other and further relief as the arbitrators deem just and proper.

OTHER ISSUES CONSIDERED AND 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 considered 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 by Claimant Malamed against Respondent Chapdelaine be and hereby are dismissed.
2. All claims by Claimant Malamed against Respondent Chapdelaine for attorneys' fee be and hereby are denied.
3. Claimant Malamed be and hereby is liable and shall pay to the Respondent, Chapdelaine, the sum of \$59,384.00, which Claimant Malamed has voluntarily agreed to pay to Chapdelaine.
4. All other claims against the Claimant by Respondent Malamed be and hereby are dismissed.
5. All claims against Third-Party Respondent McFadden be and hereby are dismissed.
6. All claims by Respondent Chapdelaine requesting attorneys' fees be and hereby are denied.

7. Each party shall bear their respective costs, including attorneys' fees.
8. All other claims be and hereby are dismissed.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the panel has determined that the NASD shall retain the \$500.00 non-refundable claim filing fee and the \$500.00 non-refundable Third-Party Claim filing fee. In addition, the panel determined, in accordance with the Court Order, that the NASD shall retain the \$5000.00 non-refundable expedited arbitration fee deposited by Claimant Malamed. The following forum fees are assessed:

6 hearing session deposits x \$750.00 = net \$4500.00 due.

Respondent Chapdelaine be and hereby is liable and shall pay to the NASD the sum of \$4500.00.

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

Concurring Arbitrators/ Signatures
Name

Vicki Z. Holleman, Esq.
Chairperson - Industry Arbitrator

Milton P. Aeder
Industry Arbitrator

Kevin M. Kelly
Industry Arbitrator

Date of Decision _____

STATE OF

COUNTY OF

On this ____ day of _____, 1994, before me personally appeared _____ known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.
