

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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Name of Claimant

Interstate/Johnson Lane Corp.

94-00172

Name of Respondent

Arthur N. Johnson

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**REPRESENTATION**

For Claimant Interstate/Johnson Lane Corp. ("Claimant") appeared Pamela P. Warnement, Esq., Deputy General Counsel of Interstate/Johnson Lane Corp. located in Charlotte, North Carolina.

For Respondent Arthur N. Johnson ("Respondent") appeared Carl B. Hubbard, Esq. of the law firm of Waggoner, Hamrick, Hasty, Monteith and Kratt located in Charlotte, North Carolina.

**CASE INFORMATION**

Statement of Claim filed: January 11, 1994.

Claimant's Submission Agreement signed on: January 11, 1994.

Statement of Answer: April 29, 1994.

Respondent's Submission Agreement signed on: April 28, 1994.

**HEARING INFORMATION**

Pre-hearing conference: October 6, 1995

Hearing Sessions/Dates: December 11, 1995 - Three Sessions

The hearing was held at the Hyatt Hotel located in Charlotte, North Carolina.

### **CASE SUMMARY**

Claimant alleged that, on or about October 1, 1991, Respondent executed an Employment and Training Agreement (the "Agreement"), pursuant to which Respondent agreed that if he terminated his employment with Claimant within three years of his registration he would reimburse Claimant for the unamortized costs of his training, which were agreed to be \$25,000.00. Claimant further alleged that Respondent voluntarily terminated his employment with Claimant on June 11, 1993 and that, pursuant to the Agreement, the balance owed by Respondent was \$13,888.89.

Respondent maintained that he began working for Claimant on October 1, 1993 in Claimant's Myrtle Beach, South Carolina branch. Respondent further maintained that he was hired as a salaried employee with the understanding that as he gained experience he would go off salary to be paid by commissions only.

Respondent maintained that the Agreement was presented to him after he had begun working for Claimant with the implicit understanding that if he did not sign it he would not be able to keep his job. Respondent maintained that the Agreement was void because it provided for a term of employment at will on Claimant's part, but it required Claimant to work for a period of three years. Respondent further maintained that the Agreement was against public policy, unconscionable and void for failure of consideration and lack of consideration.

Respondent maintained that the commissions on him netted profits to Claimant far in excess of any costs that may have been occasioned by Claimant in training him. Respondent further maintained that he did not leave Claimant's employ on his own accord, but that, through the discriminatory and unlawful practices of Claimant, he was forced to leave, which was a constructive discharge.

### **RELIEF REQUESTED**

Claimant requested that an award be entered against Respondent in the amount of \$13,888.89 plus interest from June 11, 1993 until payment. Claimant further requested that the filing fee and hearing costs be assessed against Respondent and that it be awarded any other costs and expenses as provided under the terms of the Agreement.

Respondent requested that the Statement of Claim be dismissed and that all reasonable attorneys' fees and costs be assessed against Claimant.

### **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 be and hereby is liable and shall pay to Claimant the sum of \$10,000.00.

2. Claimants request for interest is hereby denied.
3. Each party shall bear their own, including attorneys' fees.
4. All other claims are hereby denied.

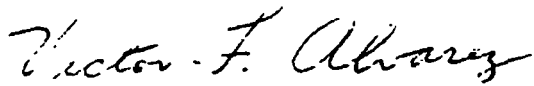
#### **FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrators has determined that the NASD shall retain the \$500.00 non-refundable filing fee previously deposited by Claimant and has assessed the following forum fees:

- |                               |            |
|-------------------------------|------------|
| 1 pre-hearing conference      | = \$300.00 |
| 3 hearing sessions x \$300.00 | = \$900.00 |
1. Respondent be and hereby is liable and shall pay to the NASD the sum of \$150.00, representing one-half of the fee assessed for the pre-hearing conference.
  2. Claimant be and hereby is liable for the sum of \$1,050.00, representing the remaining balance of forum fees assessed. Claimant previously deposited \$300.00 with the NASD which shall be applied toward the amount of forum fees assessed. Therefore, Claimant is liable and shall pay the sum of \$750.00 to the NASD.

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

#### **ARBITRATOR'S SIGNATURE**

  
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Victor F. Alvarez  
Industry Arbitrator

Date of Decision: March 11, 1996