

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Dain Bosworth Inc., Michael C. Conroy and  
William A. Ford

94-00194

Name of Respondent

Dougherty Dawkins, Strand & Bigelow, Inc.  
Third-parties, Peggy Lehtola and Dana Descourouez

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REPRESENTATION OF PARTIES

For Claimants, Dain Bosworth, Inc., Michael Conroy, and William Ford, and Third-Party Respondents, Peggy Lehtola and Dana Descourouez, at the hearing: Wendy A. Snyder, Esq. and Tim Kelly, Esq. of Kelly & Berens, P.A., Minneapolis, Minnesota.

For Respondent, Dougherty Dawkins, Strand & Bigelow, Inc. at the hearing: Joseph Anthony and Paul M. Floyd, Esq., Fruth & Anthony, Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: January 18, 1994. Claimant Dain Bosworth, Inc.'s Submission Agreement signed on: January 14, 1994. Respondents, Michael Conroy and William Ford's Submission Agreements signed on: January 14, 1994.

Statement of Answer and Counterclaim filed by Respondent, Dougherty Dawkins, Strand & Bigelow, Inc. on: January 31, 1994. Respondent Dougherty Dawkins, Strand & Bigelow, Inc.'s Submission Agreement signed on: January 24, 1994.

HEARING INFORMATION

Hearing date: February 23, 1994 for two (2) sessions:  
February 24, 1994 for two (2) sessions:  
February 25, 1994 for two (2) sessions:  
February 28, 1994 for two (2) sessions:  
March 1, 1994 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

### CASE SUMMARY

Claimants, Dain Bosworth, Inc. ("Dain"), Michael Conroy ("Conroy"), and William Ford ("Ford") or collectively "Claimants," alleged that Dain hired Conroy and Ford, who previously had been employed by Respondent Dougherty Dawkins Strand & Bigelow, Inc. ("Dougherty"), but allegedly were constructively discharged in a wrongful manner. Dain alleged that Dougherty intends to commence an action in court as soon as possible, seeking to enjoin Conroy and Ford from soliciting their clients and otherwise interfering with their ability to compete with Dougherty. Dain further alleged that they never engaged in any wrongful conduct in connection with the resignations of Conroy and Ford from Dougherty and employment with Dain.

Respondent Dougherty Dawkins stated in their Answer to the Claim that Conroy and Ford, along with their sales assistants and Counter-Respondents, Peggy Lehtola and Dana Descourouez, voluntarily terminated their employment with Dougherty Dawkins and in direct violation of their respective Confidential and Non-Competition Agreements, duty of loyalty and fiduciary duty, they immediately began working for Dain in Dain's downtown office, within fifty miles of the Dougherty Dawkins offices in which they had worked.

In its Counterclaim against Claimants, Dougherty Dawkins alleged that the individual Claimants are liable for breach of contract and breach of fiduciary duty and duty of loyalty, and that all the Claimants are liable for conversion, tortious interference with Dougherty Dawkins' present and prospective contractual relations with its customers, tortious interference with Dougherty Dawkins' employment relationships, common law misappropriation of confidential information and trade secrets and violations of the Uniform Trade Secrets Act, Unfair Competition, and that Dain is liable for violation of Article III, Section 1 of the NASD Rules of Fair Practice.

Dougherty Dawkins alleged that Counter-Respondents, Peggy Lehtola and Dana Descourouez, are liable for conversion, intentional damage to property, and breach of duty of loyalty.

### RELIEF REQUESTED

Claimants requested that Dougherty Dawkins be enjoined from commencing any court action with respect to the dispute that is the subject of this arbitration; that Dougherty Dawkins be enjoined from interfering with Dain Bosworth's efforts to recruit personnel in accordance with standard customs and practices in the securities industry; that the panel declare that claimants engaged in no wrongful conduct and that the employment of the individual claimants by Dain Bosworth was done fully in accordance with standard customs and practices in the securities industry; and that the panel grant claimants such other and further relief as equity requires.

Respondent requested an award against the individual claimants, counter-respondents, and Dain Bosworth, jointly and severally, as follows: For an order enjoining the Individual Claimants from violating their respective agreements with Dougherty Dawkins and enjoining Dain Bosworth from using any information relating to Dougherty Dawkins' customers and returning all documents reflecting such customer information and all copies to Dougherty Dawkins; For an award of compensatory damages for injuries already suffered by Dougherty Dawkins as a result of the wrongful conduct of the individual claimants, counter-respondents and Dain Bosworth; For an award of punitive damages in an amount in excess of \$50,000.00; For an award of Dougherty Dawkins' costs and fees; For such other relief as the arbitrators deem just and equitable.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties present at the hearing have agreed that the Award in this matter may be executed by 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 original remains 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:

#### **Statement of Claim**

1. Claimants, Dain Bosworth, Inc, Michael Conroy, and William Ford's Statement of Claim is denied:

#### **Counterclaim**

2. The injunction entered by Judge Shietelbein on January 24, 1994 shall remain in effect until 9:00 a.m. April 25, 1994;

3. Claimants, Michael Conroy and William Ford, shall each pay compensatory damages of Five Thousand Dollars (\$5000.00) each, to Respondent Dougherty Dawkins, Strand & Bigelow, Inc.;

4. Claimant, Dain Bosworth shall pay compensatory damages of One Hundred Thousand Dollars (\$100,000.00) to Respondent Dougherty Dawkins, Strand & Bigelow, Inc.;

5. Claimant, Dain Bosworth shall pay punitive damages of One Hundred Fifty Thousand Dollars (\$150,000.00) to Respondent Dougherty Dawkins, Strand & Bigelow, Inc. The panel

awarded punitive damages under the authority of Lee v. Chica, 983 F.2d 883 (8th Cir. 1993) cert. denied, 1145 S. Ct. 287;

6. Claimant, Dain Bosworth shall pay attorney's and professional fees of Seventy Five Thousand Dollars (\$75,000.00) to Dougherty Dawkins, Strand & Bigelow, Inc.

7. For a period of twelve (12) months from the date the award is served on the parties, Dain Bosworth shall not either solicit or hire any employee of Dougherty Dawkins, Strand & Yost, Inc.:

#### **Third-Party Claim**

8. The Third-Party Claim against Third-Party Respondents, Peggy Lehtola and Dana Descourrouez is denied.

#### **FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

10 hearing sessions X \$600.00 = \$6000.00

Pursuant to Section 44(c) of the Code of Arbitration, the NASD shall retain the non-refundable surcharge of \$2500 deposited by each Claimant and Respondent for the expedited hearing.

Additional forum fees in the amount of \$6000 are assessed against Claimants, jointly and severally, in the amount of \$3000.00 and against Respondent, Dougherty Dawkins, Strand & Bigelow, Inc. in the amount of \$3000.00.

Additional forum fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

#### **By The Arbitration Panel:**

Dated:

3-8-94

s/s James E. Green, Esq.  
James E. Green, Esq.  
Presiding, Industry Arbitrator

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3-8-94

s/s John Robert Kelly  
John Robert Kelly  
Industry Arbitrator

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s/s Scott R. Jensen  
Scott R. Jensen  
Industry Arbitrator

Date Award Served By The NASD: 3-9-94