

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Gerald C. Letch, Jr.

and

94-00995

The Principal/Eppler, Guerin & Turner, Inc.

REPRESENTATION OF PARTIES

Claimant, Gerald C. Letch, Jr. was represented by Edward S. Hubbard, Esq. of McFall, Sherwood & Sheehy located in Houston, Texas.

Respondent, The Principal/Eppler, Guerin & Turner, Inc. (n/k/a Principal Financial Services, Inc.) was represented by Brian J. Hurst, Esq. of Principal Financial Services, Inc. located in Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about March 15, 1994.

The Amended Statement of Claim was filed on or about October 21, 1994.

The Submission Agreement of Claimant, Gerald C. Letch, Jr. was signed on March 4, 1994.

The Statement of Answer was filed by Respondent, The Principal/Eppler, Guerin & Turner, Inc. (n/k/a Principal Financial Services, Inc.) on or about April 25, 1994.

The Submission Agreement of Respondent, The Principal/Eppler Guerin & Turner, Inc. (n/k/a Principal Financial Services, Inc.) was signed on April 22, 1994 by Brian J. Hurst, Senior Vice President of Principal Financial Securities, Inc.

HEARING INFORMATION

The hearing was held on June 21, 22 and 23, 1994 in Houston, Texas for a total of seven (7) hearing sessions.

CASE SUMMARY

Claimant, Gerald C. Letch ("Letch") alleged that the Respondent, The Principal/Eppler, Guerin & Turner, Inc. which is now known as

Principal Financial Services, Inc. ("Principal") breached an oral employment contract with the Claimant. As alleged, the parties entered into an oral agreement on or about November 22, 1991 which provided, in part, that, when Letch would begin employment at the Principal, Respondent would pay him a \$60,000.00 bonus in the form of a three year forgivable loan with no limitation or condition for forgiveness other than it would be forgiven in the event of the Claimant's death within three years of employment. Letch contended that, in the summer of 1991 while employed as a First Vice President with Prudential Securities, he was contacted by an executive search firm which told him the Respondent wished to meet concerning the possibility of employment. Claimant further contended that he discussed with representatives of the Principal in September, 1991 and November, 1991 that he had outstanding debts and would require a sizeable up-front bonus. During a third meeting with representatives from the Principal on or about November 22, 1991, the parties allegedly discussed and accepted orally specific aspects of the agreement including items such as the hiring of an assistant, the location of Letch's office and the confidentiality of the agreement. R. Theodore Moock, Jr. ("Moock"), Senior Vice President and Director of Branch Office Development and Sales Administration at the Principal, allegedly wrote Letch a letter dated December 2, 1991, pursuant to the Claimant's request, which put no limitation or condition for the forgiveness of the \$60,000.00 signing bonus in the form of a three year forgivable loan. After accepting the agreement as outlined in the letter of December 2, 1991, Letch began preparing for his move to the Principal by starting to inform his clients of the move pursuant to the Respondent's instructions and by alerting his office manager at Prudential that he would be leaving. Letch claimed that the Principal provided him with letters to sign and mail to his clients notifying them of the move following his furnishing the Principal with a computerized list of his clients pursuant to the Respondent's request. Letch further claimed that, shortly before he was to have started at the Principal on January 10, 1992, the Principal sent to his attorney a draft employment contract which contained a new provision stating the bonus must be repaid within three years if Letch failed to meet minimum production requirements. The Claimant further claimed that the Respondent refused to delete the new provision and insisted that the Claimant agree to it. Letch made other specific allegations against the Principal including, but, not limited to, promissory estoppel, fraud and conversion.

Respondent, The Principal/Eppler, Guerin & Turner, Inc. (n/k/a Principal Financial Services, Inc.) requested that all allegations contained in the Statement of Claim be dismissed. Respondent asserted that the Claimant was informed by Moock, during an interview in the Fall of 1991, the Principal's policy was, as reflected in its standard broker contract, that front money loans would be forgiven annually only if the broker had achieved 80% of

his pre-hire trailing twelve months gross. The Principal denies that it ever reached a final or enforceable contract with Letch and claimed that it made no use of Letch's client list and returned it to him.

RELIEF REQUESTED

Claimant, Gerald J. Letch, Jr. requested an award in the amount of approximately \$400,000.00 in actual damages, \$500,000.00 in consequential damages and punitive damages of at least three times the actual and consequential damages along with attorneys' fees and costs of arbitration.

Respondent, The Principal/Eppler, Guerin & Turner, Inc. (n/k/a Principal Financial Services, Inc.) requested that the Statement of Claim be dismissed in its entirety and that it be awarded costs and attorneys' fees.

OTHER ISSUES CONSIDERED & 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 original(s) remain on file with the NASD.

Claimant, Gerald C. Letch, Jr. filed a Motion for Leave to Amend the Statement of Claim on or about October 21, 1994. Respondent had no objection to the filing of the amendment according to their response dated October 25, 1994. After reviewing all submissions, the panel determined that the Motion for Leave to Amend the Statement of Claim was granted under Section 39 of the NASD Code of Arbitration Procedure.

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 allegations of wrongdoing and requests for relief contained in the Statement of Claim are hereby denied and dismissed in their entirety; and
2. All parties shall bear their own costs of arbitration including attorneys' fees except for those specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$500.00 per hearing session. There were seven (7) hearing sessions x \$1,000.00 = \$7,000.00 in forum fees. Pursuant to §44(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 44(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$500.00 and shall retain as forum fees the hearing session deposit in the amount of \$1,000.00 previously deposited with the NASD by the Claimant. Claimant, Gerald C. Letch, Jr. is hereby liable for and shall pay to the NASD the sum of \$6,000.00 in additional forum fees.

The NASD shall retain postponement fee in the amount of \$1,000.00 previously deposited with the NASD by the Respondent, The Principal/Eppler, Guerin & Turner, Inc. (n/k/a Principal Financial Services, Inc.). Fees are payable to the National Association of Securities Dealers, Inc.

Charles V. Dwyer, Jr.
Charles V. Dwyer, Jr.
Industry Arbitrator, Presiding Chair

Mobley E. Cox, Jr.
Mobley E. Cox, Jr.
Industry Arbitrator

Jack C. Payne
Jack C. Payne
Industry Arbitrator

Date served by the NASD: July 20, 1995