

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

IDS Financial Services, Inc.;
IDS Life Insurance Co.

94-01279

Name of Respondent

James R. Fredal

REPRESENTATION

For Claimant: IDS Financial Services, Inc. and IDS Life Insurance Company ("IDS") were represented by Gary Irwin, Esq. of IDS Financial Corp., Minneapolis, Minnesota.

For Respondent: James R. Fredal ("Fredal") appeared pro se.

CASE INFORMATION

Statement of Claim filed: April 5, 1994

Claimant's Submission Agreement signed on: March 8, 1994 by William Stolzmann of IDS Life Insurance Company and by Collen Curran of IDS Financial Services, Inc.

Statement of Answer filed by Respondent, Fredal on: June 1, 1994.

Respondent Fredal did not file an executed submission agreement. submission agreement > .

HEARING INFORMATION

Pre-Hearing Conference:

None held.

Hearing Date/Sessions:

May 23, 1995 for One (1) session.

Hearing Location:

Southfield, Michigan.

CASE SUMMARY

Claimant IDS alleged that Respondent Fredal, a Registered Representative employed by IDS from August 22, 1990 to September 21, 1993, owed a debt to IDS pursuant to agreements the parties entered into as part of Fredal's employment. This debit balance was accrued as follows:

- 1) \$5,176.83 for unpaid balance on the corporate credit card;
- 2) \$13,639.07 for drafts sent to Fredal for advances on commissions;
- 3) \$1,101.71 due to business expense deductions;
- 4) \$21,790.26 due to commission reversals created because Fredal purchased insurance for IDS clients by forgoing client signatures;
- 5) \$5,813.09 from checks sent to Fredal for the Professional Performers program;
- 6) \$1,447.54 from deductions from commissions for medical, life and special accident insurance; and
- 7) \$69.57 from miscellaneous deductions from Fredal's commissions.

Based upon the above allegations, IDS asserted claims for repayment of a debit balance and fraud.

Respondent Fredal denied the material allegations of the Statement of Claim, alleging that IDS was pursuing this matter in an attempt to harm him personally for planning to leave IDS and taking all the business he was doing with him.

RELIEF REQUESTED

IDS requested entry of an award against Fredal for \$49,037.81 plus interest for the debit balance; additional damages for the commission paid on the fraudulent policies; exemplary damages; attorneys' fees and the costs of action. At hearing, IDS amended its damage request to include additional costs incurred.

Fredal requested dismissal and a finding that he owed IDS nothing on its claim.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Fredal did not file an executed submission agreement, but upon review of the Form U-4 executed by Fredal, the panel finds that Respondent Fredal is required to submit to arbitration pursuant to section 8 of the NASD Code of Arbitration Procedure.

Fredal appeared at the hearing and made an opening statement. The panel granted Claimant's request for a ten-minute recess. Respondent Fredal did not return after the recess and the panel waited an additional 30 minutes. Respondent did not return. Pursuant to Section 29 of the NASD Code of Arbitration Procedure, the panel determined that the hearing would continue in Fredal's absence.

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) Respondent James R. Fredal is liable for and shall pay to Claimants IDS Financial Services, Inc. and IDS Life Insurance Company the sum of \$49,037.81 plus interest at the rate of 7% per annum; interest to accrue from November 9, 1993 until the amount is paid in full;
- 2) In addition, Respondent James R. Fredal is liable for and shall pay to Claimants IDS Financial Services, Inc. and IDS Life Insurance Company the sum of \$4,631.32 as attorneys' fees. In deciding to award attorneys' fees, the panel reviewed the IDS Financial Services Inc. Personal Financial Planner's Agreement executed by Respondent Fredal, and determined that authority existed for an award of attorneys' fees to the Claimants'
- 3) Furthermore, Respondent James R. Fredal is liable for and shall pay to Claimants IDS Financial Services, Inc. and IDS Life Insurance Company the sum of \$1,245.62 as costs;
- 4) The claim for exemplary damages is dismissed and denied;
- 5) All other costs of arbitration shall be borne by the party incurring the cost, except for those specifically enumerated herein; and
- 6) Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) hearing session X \$600 per session = \$600.00.

The National Association of Securities Dealers, Inc. shall retain the \$200.00 Section 45 Surcharge, the \$500.00 claim filing fee and the \$600.00 hearing session deposit previously deposited by the Claimants IDS Financial Services, Inc. and IDS Life Insurance Company. Respondent James R. Fredal is liable for and shall pay to the Claimants, IDS Financial Service, Inc. and IDS Life Insurance Company, the sum of \$1,300.00 as reimbursement of the fees paid by Claimants.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Fred B. Green, Esq.
Fred B. Green, Esq.
Industry Arbitrator
Chairperson

May 30, 1995

/s/ Frank G. Bank
Frank G. Bank
Industry Arbitrator

May 31, 1995

/s/ Peter S. Viviano
Peter S. Viviano
Industry Arbitrator

June 5, 1995

For NASD Use Only

Date of Decision: June 8, 1995