

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

David L. Gardner

and

94-01606

Name of Respondent

Deborah Christine Bernot
Peter Steven Frontiero
Joel M. Triemstra
FN Investment Center
John Francis LaSalle

REPRESENTATION OF PARTIES

David L. Gardner ("**Claimant**") was represented by Mark E. Maddox, Esq., Coons, Maddox & Koeller, Indianapolis, Indiana.

Deborah Christine Bernot ("**Respondent Bernot**") Peter Steven Frontiero ("**Respondent Frontiero**") Joel M. Triemstra ("**Respondent Triemstra**") FN Investment Center ("**Respondent FNIC**") and John Francis LaSalle ("**Respondent LaSalle**") (collectively as "**Respondents**") were represented by Mitchell D. Raup, Esq., Mayer, Brown & Platt, Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about May 2, 1994. Amendment to Statement of Claim was dated August 1, 1994. Submission Agreement of Claimant David L. Gardner was signed on April 23, 1994.

Statement of Answer was filed by Respondents Deborah Christine Bernot, Peter Steven Frontiero, Joel M. Triemstra, FN Investment Center and John Francis LaSalle on or about September 7, 1994. Submission Agreement of Respondent Deborah Christine Bernot was signed on July 26, 1994. Submission Agreement of Respondent Peter Steven Frontiero was signed on July 26, 1994. Submission Agreement of Respondent Joel M. Triemstra was signed on July 26, 1994. Submission Agreement of Respondent FN Investment Center was signed on July 27, 1994 by Deborah Bernot. Submission Agreement of John Francis LaSalle was signed on July 26, 1994.

HEARING INFORMATION

A pre-hearing conference was held on June 13, 1995 for one (1) session with Stephen Nagy, Esq., presiding.

The hearing was held on Monday, July 24, 1995 for two (2) sessions, Tuesday, July 25, 1995 for two (2) sessions, Wednesday, July 26, 1995 for three (3) sessions and Thursday, July 27, 1995 for two (2) sessions in Chicago, Illinois for a total of one (1) pre-hearing and seven (7) hearing sessions.

CASE SUMMARY

Claimant alleged that he was defamed and libeled by Respondents and that he suffered damages as a result of the intentional infliction of emotional distress, negligence and negligent supervision of Respondents. Specifically, Claimant alleged that he was defamed and libeled by the filing of fraudulent amended U-5.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimant had failed to comply with certain provisions of the internal policies. Specifically, Respondents stated that an investigation of the conduct of Claimant in connection with the 1035 exchanges made on behalf of a number of the Claimant's customers. The results of the investigation were reported on the Claimant's U-5 forms and are the subject of the claims asserted in this matter. Respondent FN Investment Center asserted a claim against the Claimant for reimbursement of the money paid to customers resulting from the improper 1035 exchanges.

RELIEF REQUESTED

Claimant requested an award in the amount of \$1,000,000 for damages resulting from the defamation of character, libel, slander, gross negligence, and negligent supervision, \$500,000 for the damages suffered for the intentional infliction of emotional distress, attorneys' fees and costs of arbitration, including expert witness and accounting fees, pre and post award interest at the statutory rate, RICO treble damages, and that Respondent FNIC be ordered to properly amend his U-5 form.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. FN Investment Center, Inc. requested an award in the amount of \$18,690.80.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Motion to Dismiss based upon the applicable statutes of limitation was considered by the undersigned arbitrators and **denied**.

Respondents Motion for Enforcement of Order of Production directed to the NASD was **denied**.

The parties have agreed that a handwritten, signed Award may be entered. 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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted in this matter shall be and hereby are dismissed in their entirety.
2. The Counterclaim asserted in this matter shall be and hereby is dismissed in its entirety.
3. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each prehearing conference, if any. There was one (1) session x \$300 and were seven (7) sessions x \$1,000 = \$7,300 in forum fees. Pursuant to §43(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 §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, the surcharge(s) imposed pursuant to §45 and shall **retain** as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with the NASD by the Claimant. Claimant shall be and hereby is liable for and shall pay to the NASD the sum of \$2,650 as forum fees.

Pursuant to §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, the surcharge(s) imposed pursuant to §45 and shall **retain** as forum fees the hearing session deposit in the amount of \$600 previously deposited with the NASD by Respondent FN Investment Center. Respondents Deborah Christine Bernot, Peter Steven Frontiero, Joel M. Triemstra, FN Investment Center shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$3,050 as the balance due for forum fees.

The NASD shall retain postponement fees in the amount of \$600 previously deposited with the NASD on behalf of Respondents. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

/s/ Stephen James Nagy, Esq.

August 21, 1995

Stephen James Nagy, Esq.

Public Arbitrator, Presiding Chair

/s/ Stephen E. Smith, Esq.

August 21, 1995

Stephen E. Smith, Esq.

Public Arbitrator

/s/ Philip M. Petraitis

August 21, 1995

Philip M. Petraitis

Industry Arbitrator