

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Thomas Roberts

vs.

Award No.
94-01652

Name of Respondent

Cantor Fitzgerald, G.P.

REPRESENTATION

For Claimant, Thomas Roberts ("Roberts"), Stewart Levy, Esq. from the firm of Eisenberg, Tanchum & Levy, located in New York, New York.

For Respondent, Cantor Fitzgerald, L.P. ("CF"), Michael Lampert, Esq. from the firm of Saul, Ewing, Remick & Saul, located in Princeton, New Jersey.

CASE INFORMATION

Statement of Claim filed: May 2, 1994.

Claimant's Submission Agreement signed on: March 24, 1994.

Statement of Answer and Counterclaim filed by Respondent on: September 27, 1994.

Respondent's Submission Agreement filed on: September 26, 1994.

Claimant's Reply to Counterclaim filed on: October 14, 1994.

HEARING INFORMATION

Hearing Dates/Sessions: September 5, 1995 - 2 sessions
 September 6, 1995 - 2 sessions
 October 10, 1995 - 2 sessions
 October 24, 1995 - 2 sessions
 December 1, 1995 - 2 sessions

Hearing Location: NASD offices located at 33 Whitehall Street, New York, New York.

CASE SUMMARY

Claimant Roberts alleged he was wrongfully terminated by Respondent CF. Roberts stated he began working for CF on April 1, 1991 as a government bond broker specializing in swap transactions pursuant to a written contract. Under the terms of the contract, explained Roberts, his employment was

for two years and he would receive an annual base salary of \$520,000.00 in addition to bonuses based upon performance. Claimant stated he created a department of six people, eventually growing to twenty, which became the leading seller of "off the run issues." As evidence of his successful performance, Claimant asserted he received a \$200,000.00 cash bonus, as well as units in CF's limited partnership.

Claimant then alleged that on March 31, 1993, when the two year contract expired, Claimant continued his employment in the same capacity. He stated that CF Vice President, Stuart Fraser, offered Roberts an additional two year contract at a guaranteed annual salary of \$650,000.00 as well as the opportunity for bonuses. Claimant stated he wanted to review the written contract but that he would accept its terms. Thus Roberts alleges that from that discussion, a binding contract existed between Claimant and Respondent. While Mr. Fraser was away from the office for a week, Claimant stated he received the contract, reviewed and signed it the same day. During that week, Claimant explained that he not only continued to render his services to CF but that CF's president, Howard Lutnick, acknowledged in a meeting with Claimant that he had been promoted to managing director.

Claimant continued to explain that he intended to hand Mr. Fraser the signed contract on his first day back in the office but instead, Mr. Lutnick informed Roberts that either he agreed to accept a sabbatical and a decrease in compensation or CF would discharge Claimant. Roberts stated he rejected this new offer and was then wrongfully terminated.

Respondent CF defended by generally denying any wrongful action on its part. In addition, CF submitted a counterclaim for damages in the amount of \$250,000.00. CF alleged Roberts was aware it forbid its brokers involved in swap transactions to have significant market exposure in any securities position at the close of business each day. CF claims Roberts ignored this and left significant security positions which damaged Respondent.

Claimant Roberts denied all allegations in the counterclaim.

RELIEF REQUESTED

Claimant requested \$1,300,00.00 in compensatory damages, plus interest, at least \$150,000.00 in additional compensatory damages and \$3,000,000.00 in punitive damages as well as attorneys' fees and other such reasonable relief. Additionally, Claimant requested that all counterclaims be dismissed

Respondent requested damages sustained as a result of Claimant's conduct, attorneys' fees, costs and other such reasonable relief.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies and 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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Cantor Fitzgerald is liable to Claimant Roberts in the amount of THREE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$300,000.00) inclusive of interest.
- 2) Respondent CF is liable for all forum fees.
- 3) Respondent CF is hereby ordered to file an amended U-5 form deleting in its entirety the explanation on the form dated July 1, 1993: "disregard of firm policy" and leaving the explanation space blank.
- 4) All other claims and counterclaims are denied.

FORUM FEES

Pursuant to Section 44(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed.

Non-refundable Filing Fee:	\$500.00
Non-refundable Counterclaim Fee:	\$500.00
Hearing Session Deposit:	\$10,000.00 (10 sessions @ \$1,000.00 per session)
Member Surcharge:	\$200.00
Administrative Costs:	\$045.00
Counterclaim Hearing Deposit:	\$750.00
Total Fees:	<hr/> \$11,995.00

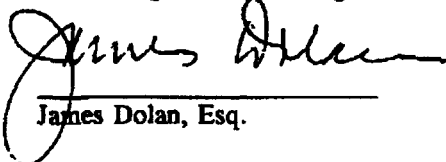
- 1) Claimant paid \$1,500.00
- 2) Respondent paid \$1,495.00 and owes \$1,500.00 payable directly to Claimant and \$9,000.00 payable to the NASD.

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

ARBITRATION PANEL

James Dolan, Esq.	-	Public Chairperson
Theodore Kadin, Esq.	-	Public Panelist
James R. Madan	-	Industry Panelist

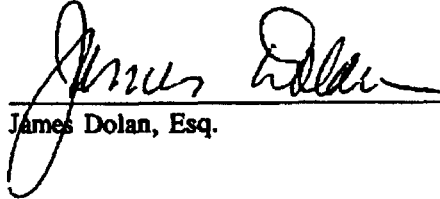
Concurring Arbitrator's Signature


James Dolan, Esq.

NASD's Date of Decision: March 13, 1996

AFFIRMATION

I, James Dolan, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.


James Dolan, Esq.



ELSA C. SHEA
NOTARY PUBLIC, State of New York
No. 4874348
Qualified in Nassau County
Commission Expires Dec. 15, 1996

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ARBITRATION PANEL

James Dolan, Esq.	-	Public Chairperson
Theodore Kadin, Esq.	-	Public Panelist
James R. Madan	-	Industry Panelist

Concurring Arbitrator's Signature



James R. Madan

NASD's Date of Decision: March 13, 1996

Award No. 94-01652

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AFFIRMATION

I JAMES R. MADAN, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

James R. Madan
James R. Madan

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ARBITRATION PANEL

James Dolan, Esq.	-	Public Chairperson
Theodore Kadin, Esq.	-	Public Panelist
James R. Madan	-	Industry Panelist

Concurring Arbitrator's Signature


Theodore Kadin, Esq.

NASD's Date of Decision: March 13, 1996

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AFFIRMATION

I, THEODORE KADIN, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

Theodore Kadin
Theodore Kadin, Esq.