

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

Bear, Stearns & Co., Inc.

NASD Arbitration
#94-01672

vs.

Name of Respondent

Richard A. Johnson, II

REPRESENTATION

For Claimant: Philip McLeod, Esq., and Peter J. Morgan, III, Esq., Keesal, Young & Logan, San Francisco, California

For Respondent: Richard A. Johnson, Esq., Payson, Arizona

CASE INFORMATION

Statement of Claim filed: May 4, 1994

Claimants' Submission Agreements signed on April 25, 1994

Respondent's Statement of Answer filed April 11, 1994; an amended Statement of Answer , Counterclaim and Third-Party Claim filed October 17, 1994

Respondent's Submission Agreement signed August 10, 1994

Reply to Counterclaim and Third-Party Claim filed December 29, 1994

Third-Party Respondents' Submission agreements signed as follows:

Theresa Payne: March 2, 1995

Robert McLalan: March 1, 1995

HEARING INFORMATION

Pre-hearing conferences of one session each were held on January 23, 1995, and February 6, 1995.

The hearing was held in San Francisco on February 23, and 24, 1995, and lasted 3 sessions.

CASE SUMMARY

Claimant alleged that Respondent breached the terms of his employment agreement dated December 10, 1993 by failing to repay to Claimant the difference between his draw and net commissions earned at the time of his termination of employment.

Respondent Johnson denied the allegations of the claim and denied liability to Claimant, counterclaiming that Bear Stearns used fraudulent misrepresentations to induce him to take employment. The amended counterclaim and third-party claim further alleged breach of contract, breach of the covenant of good faith and fair dealing, fraud in the inducement, detrimental reliance, and intentional and unjustifiable interference with contractual relations.

Counter-respondent Bear Stearns and third-party respondents Payne and McLalan denied the allegations of the counter-pleadings and asserted that such claims were an attempt to harass Bear Stearns.

RELIEF REQUESTED

Claimant requested compensatory damages of \$12,540.86, plus reimbursement for clerical support in the amount of \$2,185.13, interest, costs of arbitration and attorneys fees. Counter-respondent and third-party respondents also requested dismissal of Mr. Johnson's counterclaims and third-party claims.

Respondent Johnson requested dismissal of Bear, Stearns' claims and an award on his counter-pleadings of \$60,000 for breach of contract; plus \$50,000 as compensation for loss of income on a margin account; \$4,000 for expenses of leaving his previous employment to come to Bear, Stearns; \$250,000 for having to leave Bear, Stearns to take new employment at a lower commission rate; \$25,000 in relocation expenses; \$50,000 for mental stress; \$4,500 for expenses incurred at Bear, Stearns; at least \$1,000,000 in punitive damages; and costs of arbitration and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter maybe 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 originals remain 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:

1. Richard A. Johnson, II, is liable for and shall pay to Bear, Stearns the sum of \$12,369.65 in satisfaction of all claims.
2. All claims asserted in the counterclaim and third-party claim against Bear, Stearns, Theresa Payne and Robert McLalan, including claims for punitive damages, are dismissed in their entirety.
3. The parties shall bear their respective costs, including attorney's fees.

FORUM FEE

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the NASD shall retain the \$500 non-refundable filing fee and shall refund the \$600 hearing session deposit paid by Claimant.

In addition, the NASD shall retain the \$500 non-refundable filing fee paid by Respondent.

Richard A. Johnson, II, is assessed all forum fees as follows:

2 pre-hearing conferences @ \$300/session	\$ 600.00
3 hearing sessions @ \$1,000/session	<u>3,000.00</u>
	\$3,600.00
Credit for deposit	<u>600.00</u>
Balance due	\$3,000.00

Fees are payable to the NASD, Inc.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Allan B. Currie	Industry
Wilford Nelson	Industry
Gary Patterson	Industry

Concurring Arbitrators Signatures

Allan B. Currie

Wilford Nelson

Gary R Patterson

Gary Patterson

Date of Decision: 2/24/95

Date Served: 03/13/95