

AWARD

NASD Regulation, Inc. Office of Dispute Resolution
In the Matter of the Arbitration Between

Name of Claimant
Bruce E. Johnson,

and

95-00042

Name of Respondent
Fitzgerald, Davis & Associates, L. P.; James P. Fitzgerald;
Robert E. Davis; North Shore Securities, Inc.

REPRESENTATION OF PARTIES

For Claimant: Bruce E. Johnson ("Johnson") was represented by Stephen F. Boulton, Esq. of Cantwell & Cantwell in Chicago, Illinois.

For Respondents: Fitzgerald, Davis & Associates, L. P. ("Fitzgerald & Assoc."), James P. Fitzgerald ("Fitzgerald"), Robert E. Davis ("Davis") and North Shore Securities, Inc. ("North Shore Securities, Inc.") were represented by Diane E. Gianos of Hopkins & Sutter in Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed on: January 10, 1995

Claimant's Submission Agreement signed on: December 30, 1994 by Bruce E. Johnson

Statement of Answer filed by Respondents on: February 16, 1995

Fitzgerald, Davis & Associates', L. P. Submission Agreement signed on: February 15, 1995 by Robert E. Davis.

North Shore Securities' Submission Agreement signed on: February 15, 1997 by Robert E. Davis.

Robert E. Davis' Submission Agreement signed on: February 15, 1995 by Robert E. Davis.

James P. Fitzgerald's Submission Agreement signed on: February 15, 1995 by James P. Fitzgerald.

HEARING INFORMATION

Pre-Hearing Conferences: January 17, 1996 before One (1) arbitrator.

Hearing Dates/Sessions: January 28, 1997 for Two (2) sessions;
January 29, 1997 for Two (2) sessions.

Hearing Location: Chicago, Illinois

CASE SUMMARY

Johnson alleged fraud, breach of contract, promissory estoppel and equitable accounting. Johnson specifically alleged that:

1. Johnson was a well-respected, successful municipal bond trader employed as a Senior Vice president by Mesirow Financial, who was aggressively recruited to join the newly formed securities firm Fitzgerald, Davis & Associates;
2. In recruiting Johnson, Fitzgerald and Davis made representations regarding Johnson's future compensation, his management role in Fitzgerald & Assoc., and the opportunity to join the limited partnership. In discussing Johnson's compensation, Fitzgerald and Davis offered Johnson a bonus based upon a percentage of gross sales. Additionally, Fitzgerald and Davis promised Johnson a position on the Management Committee;
3. Johnson paid \$25,000 to Fitzgerald and Davis as part of a capital contribution suggesting that Johnson would eventually be an integral, important participant in their new venture;
4. On or about December 28, 1993, Davis insisted that Johnson sign an admission agreement without allowing Johnson to read the document. Davis assured Johnson that the terms of the agreement reflected the prior employment discussions;
5. Just a few days after signing the agreement, Davis and Fitzgerald circulated a memo which contradicted many representations made regarding Johnson's bonus compensation. In addition, Davis and Fitzgerald never allowed Johnson to participate in a management role; and
6. On May 6, 1994, Fitzgerald & Associates terminated Johnson without giving Johnson any valid reason. Because of Johnson's reliance on Fitzgerald's and Davis's false representations, Johnson suffered loss of income, alternate employment search expenses and emotional distress.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated:

1. Representations regarding Johnson's bonus compensation were merely initial projections, not promises;

2. The management committee never existed. North Shore Securities, Inc., the general partner made final management decisions;
3. Johnson was employed at will; even so, Fitzgerald & Associates had ample cause for terminating Johnson including substantial trading losses and failure to comply with Fitzgerald & Assoc.'s trading instructions; and
4. Respondents additionally alleged several affirmative defenses including: the panel does not have jurisdiction over North Shore Securities, Inc. or the personal injury claims; Claimant has failed to state a claim; Claimant cannot recover punitive damages because Respondents acted in good faith; Claimant's employment was terminable at will; all Respondents' decisions were legitimate business decisions; and the doctrines of waiver, laches, and estoppel bar Claimant's allegations.

RELIEF REQUESTED

Claimant requested an award in the amount of \$750,000.00, an equitable accounting of his partnership equity, attorneys' fees and costs.

Respondents denied the claims asserted against them and asked the panel to award them costs and attorneys' fees.

Davis insisted that Johnson sign an admission

allowing Johnson to read the document. Davis assured Adams in

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 originals remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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. Respondent Fitzgerald, Davis & Associates, L.P. is liable for and shall pay to the Claimant Bruce Johnson the sum of \$20,000.00 as actual damages;
2. The claims asserted by Claimant Bruce Johnson against Respondents James P. Fitzgerald, Robert E. Davis and North Shore Securities Inc. are dismissed with prejudice and denied in the entirety;

3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
4. Any relief not specifically awarded is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$1000.00 per hearing session with a full panel and \$300 for each prehearing conference with One arbitrator. There was one (1) prehearing session x \$300.00 = \$300.00; Four hearing sessions x \$ 1000.00 = \$4000.00; Total forum fees = \$4,300.00.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution 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 by the Claimant Bruce E. Johnson. In addition, Claimant Bruce E. Johnson is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,150.00. Furthermore, Respondent Fitzgerald, Davis & Associates, L.P. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$2,150.00 as forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$500.00. In addition, NASD Regulation, Inc. Office of Dispute Resolution shall waive the postponement fees in the amount of \$1000.00 owed by Respondent Fitzgerald, Davis & Associates, L.P.

Dated:

/s/ Frank Samuelsohn
Frank Samuelsohn
Industry Arbitrator, Presiding Chair

March 14, 1997

/s/ Michael T. Gedzun
Michael T. Gedzun
Industry Arbitrator

March 14, 1997

/s/ Jerome Stern
Jerome Stern
Industry Arbitrator

March 17, 1997