

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

W. Scott Peterson.

Claimant.

v.

No. 95-00380

Norwest Investment Services, Inc..

Respondent

REPRESENTATION OF PARTIES

Claimant W. Scott Peterson ("Claimant") was represented by Christopher D. Schneider, Esq., of Morrison & Hecker, Kansas City, Missouri.

Respondent Norwest Investment Services, Inc. ("Norwest") was represented by Robin M. Maher, Esq., of Norwest Investment Services, Inc., Minneapolis, Minnesota.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about January 25, 1995. Claimant's Submission Agreement was signed on or about January 26, 1995.

Norwest's Statement of Answer was filed on or about March 28, 1995. Norwest's Submission Agreement was signed on January 26, 1995.

HEARING INFORMATION

A pre-hearing conference was held on August 2, 1995, lasting a total of one (1) session. Hearings were held in Scottsdale, Arizona on September 12 for three (3) sessions, September 13 for three (3) sessions, and September 14, 1995, for two (2) sessions.

CASE SUMMARY

Claimant alleged that Norwest: Breached its duty of good faith and fair dealing by wrongfully discharging Claimant in order to prevent him from obtaining the benefits he was entitled to under his agreement with Norwest; was negligent and breached its duty of good faith and fair dealing by failing to adequately investigate the facts which were purportedly the reason for Claimant's termination, and by stating to third parties that Claimant had engaged in the unauthorized use of funds, had wrongfully directed that funds be directed to his personal savings account and that he had wrongfully retained interest from those transactions. Claimant also alleged that Norwest was negligent in failing to provide adequate policies and procedures that related to the handling and funding of the lease transactions that are the subject of this arbitration. Lastly, Claimant alleged that Norwest made numerous material misrepresentations that the Claimant which he reasonably relied upon, and which induced him to accept and continue employment with Norwest. The allegations arose out of three lease transactions handled by the Claimant for Arizona State University ("ASU") and the Department for Public Safety ("DPS"), Norwest's subsequent termination of Claimant's employment, and the language published on Claimant's Form U-5.

For its Answer, unless specifically admitted therein, Norwest denied each and every allegation contained in the Statement of Claim. In addition, Norwest asserted the following affirmative defenses: Claimant has failed to state a

claim upon which relief can be granted: Claimant has failed to mitigate his alleged damages; Norwest was privileged, as a matter of law, to communicate the statements set forth in the Form U-5 filed by Norwest with the NASD; Claimant was an employee at will of Norwest, and Norwest had no duty of good faith and fair dealing to Claimant; and all of the statements set forth by Norwest in the Form U-5 filed by Norwest with the NASD were true and accurate based upon the audit investigation completed by Norwest Audit.

RELIEF REQUESTED

Claimant requested that the arbitrators enter an award in his favor in the amount of \$500,000.00 or in an amount to be established at the hearing, plus punitive damages, interest and costs. In addition, Claimant requested that the arbitrators order Norwest to amend its Form U-5 such that it no longer reflects that Claimant was terminated for the unauthorized use of funds or that he improperly directed funds to be made to his own personal account or that he wrongfully withheld interest from any lease transaction.

Norwest requested that the Statement of Claim be denied.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by 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 original(s) 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. Norwest Investment Services, Inc. is liable for, and shall pay to the Claimant the sum of \$122,150.00 as satisfaction for his claim for damages.
2. Norwest Investment Services, Inc. shall amend Claimant's Form U-5 paragraph 7 to read "Inappropriate deposit of client funds to personal savings account. Interest of \$183.52 earned on the funds was kept by Mr. Peterson." Norwest Investment Services, Inc. shall also amend paragraph 9 of Claimant's Form U-5 to read, "Mr. Peterson initiated wire transfers which were to be used to finance firm municipal lease transactions. These funds were deposited to his personal savings account. All vendors relating to the lease transactions were paid according to the contract requirements; however, Mr. Peterson received and retained interest on these funds in the amount of \$183.52. A later request to wire client funds to Mr. Peterson's savings account was denied. A subsequent NASD District 3 inquiry resulted in a "No action" response dated August 11, 1994."

Each party shall bear its own costs and expenses associated with this arbitration, including attorney's fees.

FORUM FEES

Pursuant to Section 44(c) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed:

1 pre-hearing conference session x \$300.00 = \$300.00

8 hearing sessions x \$750.00 = \$6,000.00

Pursuant to Section 44(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$500.00, and shall retain the hearing session deposit in the amount of \$1,000.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$5,300.00 are assessed against Norwest Investment Services, Inc.

Pursuant to Section 45 of the Code, Norwest shall pay to the NASD a nonrefundable member surcharge in the amount of \$350.00.

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

Dated:

Name:

September 14, 1995

s/s

James E. Stark
James E. Stark
Presiding Chair
Industry Arbitrator

September 18, 1995

s/s

David W. Martin
David W. Martin
Industry Arbitrator

September 21, 1995

s/s

Richard E. Anderson
Richard E. Anderson
Industry Arbitrator