

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

William Smith

95-00385

Name of Respondent

Cantor Fitzgerald Securities

REPRESENTATION

For claimant William Smith ("claimant") appeared Brian F. Amery, Esq. of the law firm of Bressler, Amery & Ross located in Morristown, New Jersey.

For respondent Cantor Fitzgerald Securities appeared Alan Kaminsky, Esq. of the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker located in New York, New York.

CASE INFORMATION

Statement of Claim filed: January 23, 1995.

Claimant's Submission Agreement signed on: January 18, 1995.

Statement of Answer filed by respondent on: March 21, 1995.

Amended Statement of Answer filed by respondent on: March 22, 1995.

Respondent's Submission Agreement signed on: March 15, 1995.

HEARING INFORMATION

Pre-Hearing Conferences:	February 21, 1996	-	Full Panel
Hearing Dates/Sessions:	May 1, 1996	-	2 sessions
	May 2, 1996	-	1 sessions
	May 23, 1996	-	2 sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, NY.

CASE SUMMARY

Claimant alleged that he was owed \$675,000.00 by respondent which represented commissions he generated and compensation pursuant to the terms of an employment contract. Claimant further alleged that, on September 23, 1994, he was unjustly terminated from his position as Assistant Manager of respondent's treasury bond desk after working for respondent since 1982.

Claimant asserted that he was fired for a loud exchange with a colleague who he believed engaged in unethical conduct which caused his client a substantial monetary loss. Claimant further asserted that this type of exchange was not foreign to the trading room and that he had earned a reputation for aggressively representing his clients' interests.

Claimant alleged that at the time of his termination he had earned compensation for the fiscal year ending September 30, 1994 in the amount of \$500,000.00, but that respondent still owed him \$225,000.00. Additionally, claimant alleged that he was entitled to an additional \$450,000.00 under the employment agreement. Claimant contended that the employment agreement provided that the term of employment began on January 1, 1993 and ended on September 30, 1994 and automatically renewed unless either party provided notice to the other party during the month of September one year prior to the expiration of the term of employment. Accordingly, claimant asserted that respondent would have had to provide him with notice of his termination in September of 1993 to avoid being obligated to compensate him for employment for the 1994-1995 fiscal year.

Respondent maintained that claimant's employment agreement had terminated and that it completely compensated claimant for services performed up to the point of termination. Respondent further maintained that it treated claimant in a fair and proper manner, but that it ultimately concluded that claimant's behavior was unprofessional, confrontational, and potentially violent toward co-workers and necessitated his termination.

Respondent maintained that it was readily acknowledged that claimant was a difficult person to work with due to his threatening behavior and claimant was admonished on at least two occasions for his poor attitude and disrespect for fellow co-employees. Specifically, the respondent maintained that, in September of 1992, claimant was involved in an incident in the trading room wherein he physically charged after a co-worker and had to be restrained.

Respondent also maintained that, on September 16, 1994, claimant got into a dispute over a trade and he berated his co-workers. Respondent further maintained that claimant then threatened one of his co-workers with violence. Respondent contended that, as a result of claimant's continued threatening behavior, it had no other choice but to terminate him.

Respondent maintained that claimant was not entitled to \$450,000.00 under the employment agreement. Respondent asserted that the employment agreement specified that the term of employment could be terminated for cause and that the business conduct of the employee must

be totally professional both with the public and with colleagues. Accordingly, respondent maintained that claimant's employment was properly terminated for cause.

Respondent also maintained that claimant was not entitled to \$225,000.00 as compensation for the fiscal year ending September 30, 1994 and that claimant was fully compensated for what he had earned up to the point of termination. Further, respondent maintained that claimant relinquished his right to further compensation due to be paid after his termination by his failure to comply with the employment agreement.

Further, respondent asserted that claimant breached the terms of a loan made by Cantor and that claimant was required to repay the principal of \$100,000.00 on the outstanding note, plus interest and attorney's fees.

RELIEF REQUESTED

Claimant requested compensation due him in the amount of \$675,000.00 along with additional damages and attorneys' fees pursuant to the New York Wage and Hour Act.

Respondent requested that the panel dismiss the Statement of Claim in its entirety. Respondent further requested that claimant be directed to comply with the terms of the outstanding debt by repaying the \$100,000.00, plus interest and attorneys fees, in its entirety under the agreement.

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. Respondent be and hereby is liable to claimant for the sum of \$258,333.00. Claimant be and hereby is liable to respondent for the sum of \$100,000.00. Therefore, respondent is liable and shall pay claimant the sum of \$158,333.00, which is the net amount owed to claimant.
2. Respondent is liable and shall pay claimant interest of 9% on the amount of \$158,333.00 from the date of claimant's termination until May 28, 1996.
4. Claimant's and respondent's requests for attorneys' fees are hereby denied.
5. All other claims are hereby denied.

FORUM FEES

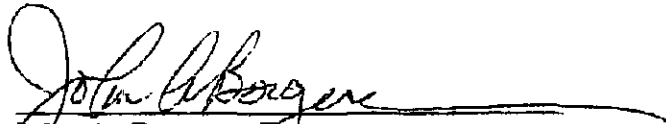
Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 filing fee previously deposited by claimant and have assessed the following forum fees:

pre-hearing conference (full panel) = \$1,000.00
5 hearing session x \$1,000.00 = \$5,000.00
total fees = \$6,000.00

- 1) Claimant is hereby liable for the sum of \$3,000.00, representing one-half of the total forum fees assessed. Claimant previously deposited \$1,000.00 with the NASD and, therefore, claimant is liable for and shall pay to the NASD the sum of \$2,000.00.
- 2) Respondent be and hereby is liable for and shall to pay to the NASD the sum of \$3,000.00, representing one-half of the total forum fees assessed.

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

Concurring Arbitrators' Signatures

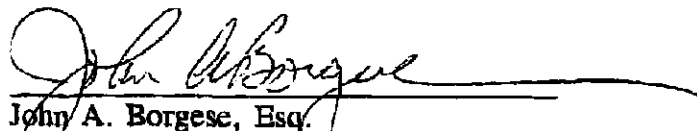

John A. Borgese, Esq.
Chairperson-Industry Arbitrator

Joan Caridi, Esq.
Industry Arbitrator

C. Anthony Bell
Industry Arbitrator


Date of decision: July 15, 1996

I, John A. Borgese, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


John A. Borgese, Esq.

Concurring Arbitrators' Signatures

John A. Borgese, Esq.
Chairperson-Industry Arbitrator



Joan Caridi, Esq.
Industry Arbitrator

C. Anthony Bell
Industry Arbitrator

Date of decision: July 15, 1996

I, Joan Caridi, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Joan Caridi, Esq.

Concurring Arbitrators' Signatures

John A. Borgese, Esq.
Chairperson-Industry Arbitrator

Joan Caridi, Esq.
Industry Arbitrator

C. Anthony Bell
C. Anthony Bell
Industry Arbitrator

Date of decision: July 15, 1996

I, C. Anthony Bell, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

C. Anthony Bell
C. Anthony Bell