

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Alan B. Lechner,

Claimant/Counterrespondent,

v.

No. 95-00715

Stifel, Nicolaus & Company, Incorporated,

Respondent/Counterclaimant.

REPRESENTATION OF PARTIES

Alan B. Lechner ("Claimant") was represented by Jonathan M. Herman, Esq., of Dorsey & Whitney, New York, New York.

Stifel, Nicolaus & Company, Incorporated ("Respondent") was represented by Kenneth W. Bean, Esq., of Sandberg, Phoenix & Von Gontard, St. Louis, Missouri.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about February 9, 1995. Claimant Submission Agreement was signed on February 7, 1995.

Respondent Statement of Answer and Counterclaim was filed on or about April 26, 1995. Respondent Submission Agreement was signed on March 21, 1995.

HEARING INFORMATION

A telephonic pre-hearing conference was held on March 8, 1996 lasting a total of one (1) session.

The hearing was held on March 13, 14, and 15, 1996 for two (2) sessions each day in St. Louis, Missouri for a total of six (6) sessions.

CASE SUMMARY

Claimant alleged that: Respondent wrongfully terminated the employment of Claimant, its Director of Research; breached a contract requiring employment at the agreed rate of compensation for a

minimum of two years; and that Respondent discriminated against Claimant in his employment on the basis of age. Claimant sought relief on the following theories: Breach of contract; promissory and equitable estoppel; and age discrimination.

Unless otherwise admitted in its Answer, Respondent denied the allegations set forth in the Statement of Claim. In addition, Respondent asserted the following affirmative defenses: Claimant was an employee at will; Claimant's claims are barred by the statute of frauds; Claimant was terminated as part of a corporate-wide reduction in force and not terminated due to his age; Claimant was not replaced by Mr. Soshnick; and Claimant has an affirmative duty to mitigate his damages and has failed to do so. Respondent also asserted a Counterclaim.

In its Counterclaim, Respondent alleged that: on or about April 19, 1994, Claimant entered into a written lease agreement with Respondent and Respondent executed a lease guarantee; Claimant defaulted on his lease payments; as of the date of the filing of the Counterclaim, and due to the lease guarantee, Respondent has paid the lessor the sum of \$25,533 and will be obliged to pay all future obligations of Claimant under the lease; Claimant had a corporate American Express card and had charged for his own benefit goods and services in the amount of \$4,301.39 which Respondent has paid; and that Claimant had breached his employment agreement by refusing to pay the American Express bill.

Unless otherwise admitted in his Reply to Counterclaims, Claimant denied each and every allegation in the Counterclaim. Claimant also asserted the following affirmative defenses: Respondent failed to mitigate its damages; and that Respondent was negligent in failing to hold Claimant's landlord to the duty to mitigate its damages.

RELIEF REQUESTED

Claimant requested the following relief: In Count I, \$668,911.04; in Count II, \$668,911.04; in Count III \$668,911.04; punitive damages in all counts; interest, costs, attorneys' fees, and disbursements; and for such other and further relief as the panel deemed just and proper. In his response to the Counterclaim, Claimant also requested an award in his favor as demanded in the Statement of Claim, and dismissing Counts I and II of the Counterclaim.

In its Answer and Counterclaim, Respondent requested that the claims asserted against it be denied. Respondent also requested the following relief: \$26,553.00 together with any subsequent amounts paid to the lessor; for interest, attorneys' fees and costs expended herein; \$4,301.39; and for such other and further relief as the panel deemed just and proper.

OTHER ISSUES CONSIDERED & DECIDED

On or about May, 30, 1995 Respondent filed an objection to the hearing location selection of New York, New York, and requested that the matter be changed to St. Louis, Missouri. On or about June 5, 1995, Claimant filed his objection to transfer of hearing location to St. Louis. On June 12, 1995, Respondent filed a further objection to a New York hearing location. On July 7, 1995 the Director determined that the hearing location would be in St. Louis, Missouri. On July 25, 1995, Claimant filed a request for the panel to determine the hearing location. On August 15, 1995, Respondent filed arguments in support of a St. Louis hearing location. After review of the relevant documents, and deliberation, the arbitrators upheld the Director's St. Louis hearing location.

The parties have agreed that a handwritten, signed Award may be entered. The parties 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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable for, and shall pay to the Claimant the following amounts: \$37,500.00 as satisfaction of Claimant's claim for lost wages; \$300,000.00 as satisfaction of Claimant's bonus related claim; \$25,000.00 as satisfaction of Claimant's claims relating to the stock option; and interest on the aforementioned amounts at the rate of 9% per annum to run from July 19, 1995, until paid, or up to an amount not to exceed \$11,000.00. -

Claimant is liable for, and shall pay to the Respondent the sum of \$4,301.00 as satisfaction of its Counterclaim made herein.

All other claims/requests for relief not specifically set forth herein are, and each of them, denied with prejudice.

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

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each pre-hearing conference, if any. There were six (6) regular sessions x \$600 and one (1) pre-hearing session x \$300 = \$3,900 in forum fees. Pursuant to §44(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §44(c) of the Code, the NASD shall **retain** the non-refundable claim filing fee in the amount of \$500 and shall **retain** as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with the NASD by the Claimant.

Pursuant to §44(c) of the Code, the NASD shall **retain** the non-refundable counterclaim filing fee in the amount of \$500 and shall **retain** as forum fees the hearing session deposit in the amount of \$600 previously deposited with the NASD by the Respondent.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$500 previously paid by the Respondent.

Additional forum fees in the amount of \$950 are assessed against the Claimant.

Additional forum fees in the amount of \$1,350 are assessed against the Respondent.

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

Dated:

Herbert Lasky
Herbert Lasky
Public Arbitrator, Presiding Chair

s/s

April 30, 1996

Robert G. Haddenhorst, Sr.
Robert G. Haddenhorst, Sr.
Public Arbitrator

s/s

April 29, 1996

Bruce Keplinger
Bruce Keplinger
Industry Arbitrator

s/s

April 26, 1996

In the Matter of the Arbitration Between

STEWART A. WINN,

Claimant,

and

RICHARD A. SASO,

Respondent.

NASD Case No. 95-00720

Both parties appeared Pro Se.

The Statement of Claim was filed on February 6, 1995.

Claimant's Submission Agreement was signed February 2, 1995.

Respondent's Answer was filed April 4, 1995.

Respondent's Submission Agreement was signed March 30, 1995.

Preliminary Motion

Claimant attempted to file an amended claim on June 29, 1995. The Respondent moved to dismiss the amended claim, and the arbitrators denied the amended claim on August 7, 1995, and directed the hearing to go forward on August 24, 1995.

The Hearing

The hearing was, in fact, held on August 24, 1995. The hearing was not declared closed at that time, to permit the arbitrators to review a further submission by the Claimant, dated July 29, 1995, which was described as a response to Respondent's Answer of April 4, 1995. That submission had not been received as of the hearing date.

Post Hearing Matters

Further correspondence was received from the Claimant on April 16 and May 13, 1996, raising issue as to the Respondent's credibility and other issues. The Respondent answered these letters on April 30 and May 17, 1996, respectively.

As a result of the continuing dispute, and although both parties acknowledged having had a full opportunity to submit all the evidence they wished at the hearing, the arbitrators decided to hold a telephone conference with both parties on July 18, 1996.

The telephone conference was held starting at 12:30 p.m. on July 18, 1996, with the Claimant, the Respondent, all three arbitrators and Ms. Deborah DeJesus, NASD Attorney, participating.

Mr. WINN's claim asserts that Mr. SASO purchased Seven Thousand Five Hundred (7500) shares of MFS Multimarket Trust (MMT) in his IRA account, thereby violating an agreement between Claimant and Respondent relative to quantity, quality and safety criteria.

Mr. SASO responds that the MMT purchase did not violate his understanding of the authority he had been given to purchase in Mr. WINN's account and that the MMT purchase was appropriate in all respects.

Clearly both parties differed in their recollections as to their numerous conversations and as to their understanding of their relationship and the authority granted to Mr. SASO.

At the conclusion of the telephone conference at 1:30 p.m. on July 18, 1996, the hearing was closed. Both parties acknowledged a full opportunity to present evidence and were instructed by the Chair not to submit any further documents. Ms. DeJesus informed the parties

that there was no recourse following the arbitrators' decision and that the only avenue of appeal was through the courts. She strongly advised either party considering this to consult with an attorney.

The Award

The arbitrators have reached the following unanimous decision:

Mr. WINN's claim that Mr. SASO's purchase of approximately Sixty Thousand (\$60,000.00) Dollars of the MFS Multimarket Income Trust in Mr. WINN's IRA account was unauthorized and unsuitable must be dismissed. The credible documentary evidence and testimony clearly established that Mr. WINN authorized the parameters of the purchase and the amount and, although Mr. WINN within a few days did raise concerns about the purchase, one of which was that the Trust was a leveraged trust, it in fact was not, and Mr. SASO so assured Mr. WINN. Furthermore, subsequent to the purchase and prior to Mr. WINN's claim being brought, there was opportunity for Mr. WINN to sell this investment at or in excess of the purchase price. Mr. WINN has acknowledged that, although he has indicated that the payment of commissions on the sale would have caused him to net a small loss of approximately One Thousand (\$1,000.00) Dollars. In any event, Mr. WINN rejected the opportunity to sell and chose to hold the security, which he still held on the date of the telephone conference on July 18, 1996.

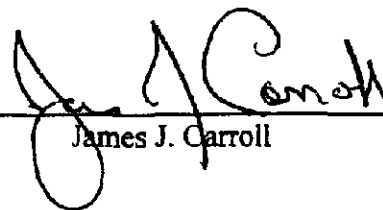
Both parties appeared in person at the hearing and on the telephone conference and have certified that they have been given an ample opportunity to present all evidence they wished to present.

Mr. WINN's claim, therefore, is dismissed. The expenses of arbitration are to be allocated equally to the parties up to and including the date of the hearing, August 24, 1995. Any expenses of the NASD subsequent to that date are to be allocated wholly to Mr. WINN.

Dated: August 30 , 1996

David W. Morris

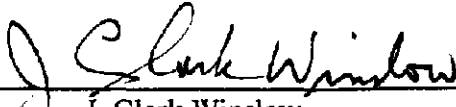
J. Clark Winslow



James J. Carroll

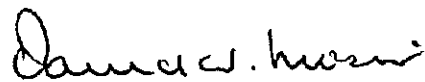
Dated: August 30, 1996

David W. Morris


J. Clark Winslow

James J. Carroll

Dated: August 30 , 1996



David W. Morris

J. Clark Winslow

James J. Carroll