

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Christopher M. Wilson

95-03246

Name of Respondents

FBS Investment Services
Michael Harlander

REPRESENTATION

Claimant, Christopher Wilson ("Wilson") was represented by Donald E. Horton, Esq. of Horton and Associates, Minneapolis, Minnesota.

Respondents, FBS Investments Services Inc. ("FBS") and Michael Harlander ("Harlander") were represented by Carol Peterson of Dorsey & Whitney Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about June 30, 1995.

Claimant's Submission Agreement was signed on June 30, 1995 by Wilson.

The Statement of Answer was filed by Respondents FBS and Harlander, on or about August 30, 1995.

The Amended Statement of Answer was filed by Respondents FBS and Harlander on or about November 17, 1995.

Respondent, FBS's Submission Agreement was signed on August 30, 1995 by Ann E. Underbrink Secretary of FBS.

Respondent, Harlander's Submission Agreement was signed on August 28, 1995 by Harlander.

HEARING INFORMATION

The Hearing was held on: November 20, 1995 for two (2) sessions;
 November 21, 1995 for two (2) sessions;
 November 22, 1995 for one (1) session.

The Hearing was held in Minneapolis, Minnesota.

CASE SUMMARY

Claimant Wilson alleged that FBS and Harlander defamed him and inflicted emotional distress upon him. Specifically, Wilson alleged as follows:

(1). He began working for FBS in or about April of 1984. He received several promotions and when he voluntarily resigned from FBS on September 13, 1993, he was Vice-President;

(2). His work performance was acceptable or better at all times and during the last three years of his employment, he was consistently one of the top producers at FBS;

(3). On the date of Wilson's resignation, Respondent Harlander sent a memorandum to the Investment Services Group at FBS in which Harlander made false and disparaging statements about Wilson's work performance;

(4). The memorandum was viewed by at least 30 individuals within the company as well as at least one FBS customer;

(5). Following distribution of the memorandum, FBS customers and former employees notified Wilson that many negative statements had been made about him at FBS and that FBS has "nothing good to say about Wilson";

(6). When Wilson discovered the existence of this memorandum, he called FBS and requested that they stop disparaging his work performance and provide him with a formal written apology and FBS refused;

(7). The conduct of the Respondents has caused Wilson economic, personal, professional, physical and emotional losses;

(8). Wilson further alleges that this conduct was defamation per se and was done with intentional, willful, wanton, malicious and outrageous infliction of emotional distress;

(9). Wilson sought judgment against Respondents for compensatory damages, emotional harm, and punitive damages. He also sought attorneys fees, costs, interest and disbursements plus such other and further relief as the arbitration panel deemed just.

The Respondents denied that they defamed Wilson or that they inflicted emotional distress upon him. Specifically, Respondents alleged that;

(1). Wilson was formerly employed by FBS. After his performance declined and he displayed difficulty in working with others at FBS, Claimant voluntarily resigned from his employment;

(2). A memorandum was distributed to the Institutional Sales Staff concerning his departure, because it was important to FBS's business that the customers previously serviced by Claimant be served by others at FBS. The memorandum was distributed to approximately twelve persons on the FBS Institutional Sales staff;

(3). The day the Memorandum was distributed, Wilson complained to FBS's Human Resource Department about the content of the memorandum. Harlander and his manager immediately took action to collect copies that had been distributed. FBS believes that no copies were distributed to customers;

(4). FBS and Harlander deny that the memorandum was defamatory and deny that it caused harm to Wilson in any way. They further deny that they acted intentionally to cause Wilson emotional distress. Respondents requested judgment in their favor;

(5). Respondents also denied many of the specific allegations and made several affirmative defenses including that the statement about Wilson were true.

RELIEF REQUESTED

Claimant requested compensatory damages, emotional harm damages, punitive damages, attorney's fees, costs, interest, and disbursements, plus other costs that the panel deemed to be just.

Respondents requested that the panel award judgment in their favor and award them their reasonable costs and attorneys fees herein, and such other relief as the panel may deem just.

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 original(s) remain on file with the NASD.

At the Hearing, the Claimants moved to dismiss Claimant's claim for damages caused by intentional infliction of emotional distress. The Motion was taken under advisement.

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). That Respondents, FBS and Harlander are, and each of them, jointly and severally liable for, and shall pay to the Claimant, Wilson, the sum of fifty thousand dollars (\$50,000.00) as an award of compensatory damages, plus interest thereon at the statutory interest rate, to accrue from November 22, 1995 until paid;

(2). That Respondents, FBS and Harlander are, and each of them, jointly and severally liable for, and shall pay to the Claimant, Wilson, the sum of fifty thousand dollars (\$50,000.00) as an award of punitive damages, pursuant to M.S. Sec. 549.19; 549.20;

(3). All other claims not expressly covered by the Award are, and each of them, denied and dismissed with prejudice.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

5 hearing sessions X \$600.00 = \$3,000.00 due.

The previously waived filing fee in the amount of \$500.00, is now due and owing in the amount of \$500.00.

Pursuant to Section 45 of the Code Respondent FBS is assessed and shall pay to the NASD its member surcharge in the amount of \$200.00.

All forum fees are assessed against Respondents, FBS and Harlander, and each of them, in the amount of the remaining \$3,500.00. Therefore, Respondent FBS are assessed \$1,750.00 and Respondent Harlander is assessed \$1,750.00 and shall pay

said amounts to the NASD. .

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

Concurring Arbitrators' Signatures

Name:

Date:

/s/ D. Randall Blohm
D. Randall Blohm, Esq.
Public Arbitrator
Chairperson

January 8, 1996

/s/ Wendy A. Sacha
Wendy A. Sacha
Public Arbitrator

January 10, 1996

/s/ Roger Larson
Roger E. Larson
Industry Arbitrator

January 22, 1996

For NASD Use Only

Date Award served on the parties: January 26, 1996