

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John G. Kinnard and Company, Inc.

95-04028

Name of Respondent

Mark J. Linehan

APR 26 1996
ARBITRATION DIVISION

REPRESENTATION

Claimant, John G. Kinnard & Company, Inc. was represented by F. Chet Taylor, Esq. of John G. Kinnard & Company, Inc., Minneapolis, Minnesota.

Respondent, Mark J. Linehan was represented by Corrine D. Lynch, Esq. of Bloomington, Minnesota.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on August 21, 1995.

Claimant, John G. Kinnard & Company, Inc.'s Submission Agreement was signed on August 15, 1995 by Gerald M. Gifford, Executive Vice President of John G. Kinnard and Company, Inc.

A Statement of Answer was filed with the NASD by Respondent, Mark J. Linehan on October 13, 1995.

Respondent, Mark J. Linehan did not file an executed Submission Agreement with the NASD.

HEARING INFORMATION

The hearing took place on March 26, 1996 and lasted for two (2) hearing sessions.

The hearing location was Minneapolis, Minnesota.

CASE SUMMARY

Claimant, John G. Kinnard & Company, Inc. ("Kinnard") alleged that Respondent, Mark J. Linehan ("Linehan") became employed as a registered representative of Kinnard on May 16, 1994. As part of the terms of his employment, Kinnard agreed to pay Linehan an advance payment which represented approximately 35% of his trailing twelve months of gross production. Linehan acknowledged that he was an "at will" employee when he signed his employment application. Linehan also signed a promissory note for \$60,000.00 that represented the advance payment and which was secured by a confession of judgment. The promissory note was structured as a no-interest loan which was to be repaid over a thirty-six (36) month period at \$1,666.67 per month. The note provided that in the event of his default or if Linehan was "terminated for any reason", "the total unpaid portion of principal shall not be forgiven, and will become immediately due and payable."

Kinnard alleged that Linehan's performance as an Investment Executive at Kinnard was substandard. Nevertheless, from July 1, 1994 through June 1, 1995, monthly note payments totalling \$20,000.00 were forgiven pursuant to the terms of the promissory note. In June of 1995, Linehan stopped showing up for work and he was terminated for cause on June 20, 1995. Under the terms of the promissory note, the remaining balance of \$40,000.00 became immediately due and payable upon Linehan's termination. Kinnard sent Linehan a demand letter and he refused to make any payment on the note.

Linehan alleged that Kinnard terminated him, that the financial condition of Kinnard was misrepresented to him and that the commission payout schedule of Kinnard was also misrepresented to him by his boss. Linehan alleged that when he became aware of alleged financial problems at Kinnard he began to question the company's financial strength. Linehan alleged that these questions resulted in retaliation against him and that his boss became hostile to him. Linehan asserted that the working situation deteriorated to such a point that he was terminated on June 9, 1995. Linehan alleged that he was not presented the contract or note to sign until he had severed his ties with his former employer and that he signed the contract under duress and coercion.

RELIEF REQUESTED

Kinnard requested \$40,000.00, plus interest at the legal rate of six percent (6%) per annum from June 20, 1995 through the date of final collection, plus costs of collection including reasonable attorney's fees.

Linehan requested dismissal of the claim.

OTHER ISSUES CONSIDERED AND DECIDED

Linehan did not file an executed submission agreement with the NASD, but he was obligated to arbitrate this matter pursuant to Section 8(a)(2) of the NASD Code of Arbitration Procedure and having answered the claim, appeared at the hearing and testified, Linehan is bound by the panel's decision on all issues submitted for determination.

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. Linehan is liable for and shall pay to Kinnard, the sum of Thirty thousand one hundred twenty one dollars and forty six cents (\$30,121.46);
2. No interest is awarded on the above stated sum; and,
3. Other than forum fees which are addressed below, the parties shall each bear their own costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$500.00 claim filing fee and the \$600.00 hearing session deposit as well as the \$300.00 member surcharge paid to the NASD by Kinnard to initiate this action. Linehan is assessed and shall pay to the NASD additional forum fees in the amount of \$600.00. Forum fees were calculated at the rate of \$600.00 per hearing session for two (2) hearing sessions.

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Additional forum fees assessed to the parties are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Jacque E. Foust
Jacque E. Foust
Presiding Chairperson
Industry Arbitrator

April 16, 1996
Dated

Fred J. Souba
Fred J. Souba
Panelist
Industry Arbitrator

4-18-96
Dated

Roger E. Larson
Roger E. Larson
Panelist
Industry Arbitrator

4-25-96
Dated

FOR NASD USE ONLY

Date award served on the parties by the NASD: _____