

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Leo Nolan

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Securities Dealers, Inc.

1996

95-04962

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Name of Respondent

Citicorp Securities Markets, Inc.

REPRESENTATION

For Claimant Leo Nolan ("claimant") appeared Scott Greathead, Esq. of the law firm of Owen & Davis located in New York, New York.

For Respondent Citicorp Securities Markets, Inc. ("respondent") appeared Joseph Baumgarten, Esq. of the law firm of Proskauer Rose Goetz & Mendelsohn located in New York, New York.

CASE INFORMATION

Statement of Claim filed: October 20, 1995

Amended Statement of Claim filed: September 16, 1996

Claimant's Submission Agreement signed on: October 18, 1995

Statement of Answer filed by respondent on: January 15, 1996

Respondent's Submission Agreement signed on: January 12, 1996

HEARING INFORMATION

Pre-Hearing Conference:	September 25, 1996	1 session
Hearing Dates/Sessions:	October 1, 1996	2 sessions
	October 2, 1996	2 sessions
	October 3, 1996	2 sessions

The hearings were conducted at the Midday Club, 140 Broadway, New York City, New York.

CASE SUMMARY

Claimant alleged that, in June 1991, he entered into employment negotiations with respondent wherein, among other things, it was agreed that he would help establish a high-grade corporate bond department for respondent. Claimant also alleged that the negotiations resulted in a July 18, 1991 Letter Agreement ("Agreement") and oral agreements which together formed the terms of the employment agreement between the parties. Claimant contended that the Agreement provided for an annual base salary plus a guaranteed bonus for 1991 and 1992 and guarantees with respect to certain sales accounts for 1993. Claimant maintained that the guarantees along with oral representations made by respondent contemplated that claimant's employment with respondent would extend at least through the end of 1993. Claimant further contended that it was the intention of the parties, and his understanding based upon oral representations and promises made to him by respondent's representatives that, for 1993 and subsequent years, he would continue to receive an annual base salary and a performance bonus. Claimant also contended that his bonus model conformed with respondent's customary bonus policy.

Claimant asserted that he commenced employment with respondent in July of 1991 with the responsibility of developing the infant high grade bond department. Claimant asserted that he produced significant sales in 1991 through 1993. Claimant also asserted that respondent recognized his performance through written and oral praise. Claimant alleged that in 1992 he had an opportunity to leave employment with respondent for another opportunity and an increased salary but stayed with respondent because he was assured that he would receive salary increases and a promotion. Claimant further alleged that on June 7, 1993, he was abruptly forced to resign when management accused him of violating written corporate policy governing expenditures for customer entertainment. Claimant alleged that respondent had not provided him with a copy of the policy nor had respondent ever promulgated an expense policy during claimant's employment. Claimant alleged that his supervisor always approved his expenses and that he used his expense account exclusively for business purposes. Claimant alleged that respondent wrongfully terminated him as a Vice President and corporate bond salesman. Claimant also contended that respondent refused to pay him for the sales credits he had generated despite wrongfully forcing him to resign.

Claimant asserted that due to the acts of the respondent he is entitled to relief under several legal theories including; 1) breach of the express terms of the employment agreement, 2) breach of an implied contract to pay him a bonus for 1993, and, 3) breach of the express promise made to him in April 1993 to pay him a bonus as inducement to remain in respondent's employ.

Respondent denied the allegations contained in the Statement of Claim. Respondent maintained that claimant was requested to resign from his bond sales position in June 1993 after an investigation revealed flagrant abuse of expense policies and procedures. Respondent maintained that in early 1993, the Fixed Income Financial Control Staff performed a review of expenses incurred by claimant and other employees which revealed that expenses relating to the use of radio cars by employees, as well as certain entertainment expenses, were being improperly paid through a checking account maintained for syndicated expenses only. Respondent further maintained that the scheme used by claimant and others allowed \$200,000.00 of expenses to bypass normal management review. Respondent contended that several examples of abuses by claimant were discovered and consequently, his claim for the unpaid bonus is without merit.

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Respondent further maintained that it is under no obligation, contractual or otherwise, to pay claimant for a 1993 bonus. Respondent maintained that the only commitments it made to claimant were for a minimum base salary and bonus for calendar years 1991 and 1992 as evidenced in the Agreement. Respondent contended that claimant was never promised, in writing or otherwise, a bonus for 1993. Respondent further asserted that even if such a promise had been made, it would be unsupported by consideration, and would therefore be unenforceable. Respondent contended that its bonus policy vests sole and exclusive discretion in management for payment of bonuses which are generally paid to current employees in the first quarter following the prior calendar year. Respondent also contended that bonuses are given for performance and that claimant's misconduct manifests his ineligibility for the 1993 bonus. Respondent maintained that it is a long-standing company practice not to pay employees who leave its employ, as claimant did, prior to the bonus payout date. Respondent also asserted that claimant's alleged reliance on the promise supposedly made by respondent is insufficient as a matter of law as claimant did not suffer a detriment because he commenced other employment shortly after his termination from Citicorp.

RELIEF REQUESTED

Claimant requested a minimum of \$1,870,513.00 in unpaid bonus compensation; \$100,000.00 in severance; plus attorney's fees, costs and pre-award interest. Claimant further requested that respondent be required to amend his U-5 form to reflect that he engaged in no wrongdoing and was terminated without cause. Claimant also requested such other and further relief as the arbitrators find appropriate. Respondent requested that the claims be dismissed in their entirety. Respondent further requested that it not be directed to amend claimant's U-5 as it is consistent with respondent's reporting obligations to the NASD.

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 originals 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. The respondent Citicorp Securities Markets, Inc. is liable and shall pay to the claimant Leo Nolan \$600,000.00 in compensatory damages.

2. The respondent Citicorp Securities Markets, Inc. is liable and shall pay to the claimant Leo Nolan simple interest at the rate of 9% from February 7, 1994 until present for a total of \$144,000.00.
3. The parties shall bear their respective costs.
4. All other relief requests are denied.

OTHER COSTS

The respondent Citicorp Securities Markets, Inc. is assessed a postponement fee in the amount of \$1,000.00 which was previously paid to NASD Regulation and shall be retained.

The respondent Citicorp Securities Markets, Inc. is assessed \$500.00 pursuant to Section 10333 of the NASD Regulation Code of Arbitration Procedure.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation shall retain the \$500.00 non-refundable filing fee previously deposited by Claimant and have assessed the following forum fees:

7 Sessions x \$1,000.00	= \$7,000.00
Minus Claimant's \$1,000.00 deposit	= \$1,000.00
total outstanding	= \$6,000.00

Claimant be and hereby is liable for the sum of \$3,500.00 representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$1,000.00 with the NASD. Therefore, \$2,500.00 is owed to NASD Regulation by the claimant.

Respondent be and hereby is liable for the sum of \$3,500.00 representing one-half of the total amount of forum fees assessed. Therefore, \$3,500.00 is owed to NASD Regulation by the respondent.


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

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Award 9504962

ARBITRATOR'S SIGNATURE

Concurring Arbitrator's Signature


Dean E. Kois

I, DEAN E. KOIS, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.


Dean E. Kois

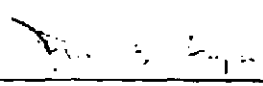
NASD Date of Decision: October 24, 1996

Award 95-04962

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ARBITRATOR'S SIGNATURE

Concurring Arbitrator's Signature



John B. Ryan

I, JOHN B. RYAN, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



John B. Ryan



John B. Ryan

NASD Date of Decision: October 24, 1996

NASD Date of Decision: October 24, 1996

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Award 9504962

ARBITRATOR'S SIGNATURE

Concurring Arbitrator's Signature

David Hyman, Esq.
M, David Hyman, Esq.

A- M, DAVID HYMAN, ESQ., do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

David Hyman
M, David Hyman, Esq.

NASD Date of Decision: October 24, 1996