

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Ronald A. Alghini

96-00317

Name of Respondents

The Chicago Corporation;
John A. Wing

REPRESENTATION

For Claimant: Ronald A. Alghini ("Alghini") was represented by Peter J. Berman, Esq., of Peter J. Berman, Ltd., located in Chicago, Illinois.

For Respondents: The Chicago Corporation ("TCC") and John A. Wing ("Wing") were represented by Francis X. Grossi, Jr., Esq. and Michael I. Leonard, Esq. of Bates Meckler Bulger & Tilson, located in Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: January 22, 1996.

Claimant's Submission Agreement signed on: January 19, 1996.

Statement of Answer filed by Respondents TCC and Wing on: March 21, 1996.

Respondent TCC's Submission Agreement signed on: March 20, 1996 by Maureen C. Guifoile, Assistant Secretary, The Chicago Corporation.

Respondent Wing's Submission Agreement signed on: March 20, 1996.

Respondents' Motion to Dismiss All Counts of Claimant's Statement of Claim filed: March 21, 1996.

Claimant's Memorandum in Opposition to Respondents' Motion to Dismiss filed: April 12, 1996.

Respondents' Reply Memorandum in Support of Their Motion to Dismiss All Counts of Alghini's Statement of Claim filed: May 30, 1996.

Claimant's Motion to Strike Respondents' Affirmative Defenses filed: April 22, 1996.

Respondents' response Brief in Opposition to Claimant's Motion to Strike Respondents' Affirmative Defenses filed: May 31, 1996.

Claimant's Reply Memorandum in Support of His Motion to Strike Respondents' Affirmative Defenses filed on: June 24, 1996.

HEARING INFORMATION

Pre-Hearing Conference: November 6, 1996 for One (1) session before One (1) arbitrator.

Hearing Dates/Sessions: December 2, 1996 for Two (2) sessions;
December 3, 1996 for Two (2) sessions;
December 4, 1996 for Two (2) sessions;
December 5, 1996 for Two (2) sessions;
December 6, 1996 for Two (2) sessions; and
December 7, 1996 for One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant Alghini asserted claims against Respondents for breach of contract, fraud, breach of fiduciary duty, promissory estoppel, violation of the rules of the NASD, and violation of the Illinois Wage Payment and Collection Act. These claims were based upon the following allegations:

1. In the fall of 1991, Alghini became manager of TCC's Regional Specialist Group ("RSG"). Wing offered Alghini an annual salary of \$150,000.00, plus 25% of the net profits of the RSG. In addition, Wing stated that Alghini would receive an additional share of the profits from the sale of the RSG's "books" if they were sold for substantial amounts. Alghini accepted the offer in early November 1991 and began to build the business of the RSG with the view of selling in two years. Based upon TCC's past treatment of net income received and expenses incurred during Alghini's employment and representations made by Wing, Alghini reasonably expected TCC to pay him 25% of the net profits from the sale of the RSG;
2. Alghini improved the performance of the RSG in order to make it more attractive for sale. When the market for sale of the RSG was poor in 1993, the parties agreed to build the business for sale at a later time. By early 1995, opportunities for sale had improved and Alghini was asked to consult with TCC's investment banker to sell RSG;
3. In order to keep Alghini from looking for new employment during the sale and lowering the value received for the sale of RSG, TCC and Wing represented that Alghini would have continued employment at TCC after the sale of the RSG. In reliance of these representations, Alghini did not seek new employment;
4. In October 1995, the RSG was sold for 2.5 million dollars. Shortly thereafter, Alghini's employment was terminated. Severance pay was offered, but Alghini did not receive 25% of the net profits received from the sale of the RSG. In addition, Respondents have continued to withhold payment of the incentive compensation due Alghini for the net profits received for day-to-day operations incurred during the last six months of his employment.

TCC and Wing denied the material allegations of the Claim, asserting that:

1. Pursuant to the parties agreement, Alghini was to receive salary and a bonus equal to 25% of the profits received from TCC's specialist activities. In addition, TCC agreed to pay Alghini additional sums for sale of the RSG's books within the next two years (prior to December 1993) in accordance to a formula in which Alghini received zero in the event of a sales price under \$4.0 million dollars;
2. Wing made it absolutely clear to Alghini that he was not entitled to 25% of the profits from the sale of the RSG;
3. In addition, Alghini's claims are contrary and inconsistent with the terms of the parties employment agreement; and
4. Wing did not promise continued employment for Alghini after the sale of the RSG, but only told him that he was free to pursue a position with TCC as an institutional trader. Alghini was an employee-at-will and TCC was under no obligation to employ Alghini indefinitely even if Wing had the conversation alleged by Alghini.

In addition, TCC and Wing asserted several affirmative defenses.

RELIEF REQUESTED

Claimant requested entry of an award against Respondents for an amount to be determined at hearing (approximately \$800,000.00) with interest at the prime rate from October 10, 1995 until the date of the award, punitive damages, all Claimant's costs, and for such other relief as the Panel deemed just and equitable.

Respondents requested judgment in their favor and against Claimant, for their fees and costs, and for such other relief as the Panel were to deem appropriate.

OTHER ISSUES CONSIDERED & DECIDED

The Panel denied Respondents' Motion to Dismiss and Claimant's Motion to Strike Affirmative Defenses prior to hearing. At hearing, Respondents presented a Motion for Directed Finding at the conclusion of both the Claimant's and Respondents' case. The Panel determined that the Motion would be denied.

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. Respondent The Chicago Corporation is liable for and shall pay to the Claimant, Ronald A. Alghini, the sum of Two Hundred Sixty Five Thousand (\$265,000.00) Dollars

as actual damages;

2. In addition, Respondent The Chicago Corporation is liable for and shall pay to the Claimant, Ronald A. Alghini, interest on the sum of Sixty Five Thousand (\$65,000.00) Dollars at the rate of 8.25% per annum from October 10, 1995 until the award is paid in full;
3. The claims against Respondent John A. Wing are dismissed with prejudice and denied in their entirety;
4. The claims for punitive damages are dismissed with prejudice and denied in their entirety;
5. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
6. Any relief not specifically awarded is hereby denied.

OTHER COSTS

The NASD Regulation Inc., Office of Dispute Resolution shall retain the \$500.00 surcharge paid by Respondent The Chicago Corporation pursuant to Section 10333 of the Code of Arbitration Procedure.

FORUM FEES

Pursuant to Section 10205(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) pre-hearing conference with an arbitrator x \$300.00 = \$300.00; Eleven (11) hearing sessions x \$1,000.00 per session = \$11,000.00; Total Forum Fees = \$11,300.00. The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$500.00 non-refundable claim filing fee and the \$1,000.00 hearing sessions deposit previously deposited by the Claimant, Ronald A. Alghini. Respondent The Chicago Corporation is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$10,300.00 as forum fees.

Concurring Arbitrators' Signatures

Name

Date

/s/ Brian E. Slotky
Brian E. Slotky-Chairperson
Industry Arbitrator

December 31, 1996

/s/ Ramona V. Larson
Ramona V. Larson
Industry Arbitrator

December 31, 1996

/s/ Michael T. Gedzun
Michael T. Gedzun
Industry Arbitrator

December 30, 1996