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AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Thomas Jones,

Claimant,

and

No. 96-00725

Foresters Equity Services Inc.

Respondent.

REPRESENTATION OF PARTIES

For Claimant: Thomas Jones ("Jones") was represented by Steven J. Rotunno, Esq. of Kubasiak Cremieux Fylstra Reizen & Rotun, located in Chicago, Illinois. *

For Respondent: Foresters Equity Services Incorporated ("Foresters Equity") was represented by Michael J. McAllister, Esq. of Lane & Mittendorf LLP, located in New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on: February 20, 1996.

Claimant's Submission Agreement was signed on: February 16, 1996.

Respondent's Statement of Answer was filed on: May 2, 1996.

The NASD Regulation, Inc. Office of Dispute Resolution has no record of a properly executed submission agreement from Foresters Equity.

HEARING INFORMATION

Pre-hearing conferences held:	December 9, 1996 for one (1) session.
The hearing was held on:	March 10, 1997 for two (2) sessions;
	March 11, 1997 for two (2) sessions;
	April 8, 1997 for two (2) sessions;
	April 9, 1997 for one (1) session;

July 10, 1997 for two (2) sessions; and
July 11, 1997 for one (1) session.

The hearing was held in: Chicago, Illinois.

CASE SUMMARY

Jones brought this action against Foresters Equity for wrongful termination and defamation seeking damages for lost income, future income, damage to his business reputation and mental anguish. Jones stated that he was employed by Foresters Equity as a registered broker-dealer until February 1995, at which time Foresters Equity wrongfully terminated him. Jones asserted that on February 17, 1995, Foresters Equity filed a knowingly false Form U-5 with the National Association of Securities Dealers ("NASD"), which stated that he violated NASD and Securities and Exchange Commission ("SEC") rules. Foresters Equity filed another false Form U-5 on April 18, 1995. According to Jones, the NASD conducted an investigation and found that no action was warranted against him and advised him that he did not violate either NASD or SEC rules. Thereafter, Jones requested that Foresters Equity rehire him and have his license renewed so that he could continue earning a living, but they refused. Based on these allegations, Jones asserted the following causes of action: (1) wrongful termination; (2) unjust enrichment; and (3) defamation and business disparagement.

Foresters Equity denied the material allegations set forth in the Statement of Claim, alleging that Jones was properly terminated because he refused to follow the direct orders of his superiors to return corporate documents to their appropriate location. According to the Answer, after terminating Jones and conferring with NASD compliance personnel and corporate counsel, Foresters Equity, as required, filed with the NASD a Form U-5 and amended Form U-5, setting forth its basis for termination. Foresters Equity contended that the Forms U-5 correctly stated that Jones refused to comply with his superiors' directives, who are, with Jones, required to comply with the books and records maintenance requirements of the SEC and the NASD. Foresters Equity argued that even if the Forms U-5 were found to be defamatory by the Panel, Jones is barred from recovery because Foresters Equity's acts are privileged under the laws of immunity. Finally, Foresters Equity averred that because Jones was the wrongdoer, Foresters Equity was not unjustly enriched.

RELIEF REQUESTED

Jones requested an order directing Respondent to reinstate him as a registered representative in the Peoria, Illinois office; an order directing Respondent to withdraw both the February 17, 1995 and April 18, 1995 Forms U-5 and/or cause those Forms U-5 to be expunged from the NASD records; one-half of all past-due 12B-1 fees that were earned on Claimant's customers, but not paid to him,

from January 1, 1995, through the date of the award by the Arbitrators; one-half of all 12B-1 fees earned since the date of his termination and for a period of time for at least fifteen (15) years in the future, on all of his customers in existence on December 31, 1994; an amount equal to the lost income he suffered as a result of not being permitted to sell mutual funds from January 1, 1995 through the date of the award by the Arbitrators; an amount of at least \$200,000; punitive damages; and attorneys' fees and costs in this arbitration.

Foresters Equity requested that the claims asserted against it be dismissed in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Foresters Equity Services Inc. did not file an executed submission agreement, but is required to submit to arbitration pursuant to Section 10201 of the Code of Arbitration Procedure.

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 Regulation, Inc. Office of Dispute Resolution.

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 Foresters Equity Services Incorporated is liable for and shall pay to Claimant Thomas Jones the sum of \$125,001.00 as compensatory damages;
2. The requests for punitive damages are hereby denied;
3. The arbitrators hereby order that the termination information for Claimant Thomas Jones currently in the Central Registration Depository ("CRD") of the National Association of Securities Dealers, Inc. be expunged and that the information on file be revised as follows:
 - a. Section 12 of the Form U-5 dated February 17, 1995 shall be revised to indicate the explanation of termination was "policy differences". All current language of Section 12 is to be removed.

Question 15 shall be changed to "No" and all the language of the DRP-5 is to be removed;

b. Section 12 of the Form U-5 dated April 18, 1995 shall be revised to say that the explanation for termination states "Termination after transfer to another city due to office policy disagreement." The current language shall be removed. The language of the DRP-5 is to be removed;

4. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and

5. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to § 10205(b) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed: One (1) pre-hearing session x \$300.00 = \$300.00; Ten (10) hearing sessions x \$750.00 = \$7,500.00; Total forum fees = \$7,800.00.

Pursuant to § 10205(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$500.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Thomas Jones.

Claimant Thomas Jones is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$3,150.00 (= ½\$7,800 total forum fees - \$750 hearing session deposit).

Respondent Foresters Equity Services Incorporated is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$3,900.00 (= ½\$7,800 total forum fees).

The NASD Regulation, Inc. Office of Dispute Resolution shall **retain** postponement fees in the amount of \$750.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant Thomas Jones.

Claimant Thomas Jones is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution costs of \$20.00 for copies of two tapes of the arbitration hearing in this matter.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Respondent Foresters Equity Services Incorporated.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures

/s/ Ralph M. Goren, Esq.
Ralph M. Goren, Esquire
Chairperson
Public Arbitrator

August 25, 1997
Dated:

/s/ Ronald P. Smith
Ronald P. Smith
Public Arbitrator

August 25, 1997
Dated:

/s/ John F. Detmer
John F. Detmer
Industry Arbitrator

August 27, 1997
Dated:

For NASD use only:

Date Award was served on the parties: August 28, 1997