

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Lisa A. Powell

96-00766

Name of Respondent(s)

Linsco/Private Ledger Corp.
Guy L. Bassini

REPRESENTATION

For Claimant Lisa A. Powell ("Powell"): Russell Forkey, Esq. of the law office of Russell Forkey, Esq., Ft. Lauderdale, FL.

For Respondent Linsco/Private Ledger Corp. ("Linsco"): David M. Freniere, Esq. of Linsco, Boston, MA.

For Respondent Guy L. Bassini ("Bassini"): Joseph Vallo, Esq. of the law office of Joseph Vallo, Esq., Ft. Lauderdale, FL.

CASE INFORMATION

Statement of Claim filed: February 21, 1996 and amended May 15, 1996. Claimant's Submission Agreement signed on: February 14, 1996.

Statement of Answer and Counterclaim filed by Respondent Linsco on: April 17, 1996. Respondent Linsco's Submission Agreement signed on: April 16, 1996 by Mark Lopez on behalf of Linsco.

Statement of Answer and Counterclaim filed by Respondent Bassini on: April 18, 1996 and amended on May 30, 1996. Respondent Bassini's Submission Agreement signed on: April 16, 1996.

Answers to Respondents' Counterclaims filed by Claimant on: May 15, 1996.

HEARING INFORMATION

On February 19, 20 and 21, 1997 in Ft. Lauderdale, Florida, hearings lasting six sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents Bassini and Linsco were liable for breach of contract; breach of fiduciary duty; intentional interference with an advantageous business relationship; negligence; and, conversion. Claimant further alleged that Respondent Bassini was also liable for slander based on statements made by Bassini with the intent to cause harm to her reputation. In the Amended Statement of Claim Claimant further alleged that Bassini was also liable for indemnification relative to the note upon which Linsco filed its counterclaim against Claimant.

Claimant alleged that she and Bassini while employed at Merrill Lynch Pierce Fenner and Smith, Inc. ("Merrill Lynch") decided to prospect clients jointly and formed a partnership by which they agreed to combine their client assets, split all business expenses and split their commissions equally. Claimant next maintained that she and Bassini decided to leave Merrill Lynch and open their own independent office through Respondent Linsco where they continued their arrangement. Claimant next maintained that Linsco loaned her and Bassini \$29,160.00 (plus \$10,132.13 for legal fees) in order to pay Merrill Lynch for the right to solicit the clients that Claimant and Bassini served while at Merrill Lynch and that such loan was structured in the form of a promissory note which would be paid off through monthly deductions from their commission checks.

Claimant next maintained that she and Bassini had a falling out and decided to sever their partnership and split their clients as well as the office equipment but that Bassini subsequently changed his mind and wrongfully contacted all of their clients and induced them to execute a form which made him the sole broker on the clients' accounts. Claimant alleged that in anticipation of Bassini's attempting to usurp the joint clients, she alerted Linsco to the dissolution of the partnership and requested that they take some action to prevent Bassini from doing so and that Linsco assured her that Bassini would not be able to obtain control over the accounts without obtaining her signature.

Respondent Bassini denied all allegations of wrongdoing and alleged that the Merrill Lynch pooling agreement signed by the parties while they were employed by Merrill Lynch terminated when the parties resigned from Merrill Lynch. Bassini maintained that while they were employed by Linsco the agreements signed at Linsco governed their activities and that there was no agreement to split the joint clients upon termination of the partnership and no restriction that prohibited him from competing for the clients. Bassini next maintained that when he notified Powell of his resignation, he was free to compete with Powell for the clients and that the clients ultimately decided who would service their accounts. Bassini next maintained that Powell never made any attempts to contact the clients or to compete with Bassini for the clients. Bassini responded to the Amended Statement of Claim by denying all allegations of liability and

asserting the affirmative defense of failure to state a claim.

Bassini filed a counterclaim and alleged that Powell was liable for \$15,000.00 in partnership expenses that were personally paid by Bassini plus \$2,500.00 for a draw against commissions taken by Powell at a time when there was a shortage of funds in the corporate account such that Bassini was unable to receive an amount equal to Powell. Bassini further alleged that Claimant is liable for slander and intentional infliction of emotional distress.

Claimant denied all allegations of liability and wrongdoing alleged in Respondent Bassini's counterclaim and asserted affirmative defenses including failure to state a claim, estoppel and waiver.

Respondent Linsco denied all allegations of wrongdoing and alleged that at all times during the dissolution of the Powell-Bassini partnership, Linsco acted in a neutral fashion and informed both individuals that it would implement any agreement that they ultimately reached and advised Powell and Bassini that it was up to them to determine how they wished to divide the business. Linsco asserted affirmative defenses including failure to state a claim; statutes of limitation; waiver; estoppel; laches; ratification; good faith; lack of reliance; any losses which Powell experienced resulted from her own acts and omissions; and, contributory negligence. Linsco asserted a counterclaim for the unpaid portion of the note which became due and owing upon Powell's termination from Linsco.

Claimant denied all allegations of liability and wrongdoing in Respondent Linsco's counterclaim and asserted affirmative defenses including failure to state a claim; failure to join an indispensable party; estoppel and, waiver.

RELIEF REQUESTED

Claimant requested damages in the amount of \$300,000.00 plus punitive damages in the amount of \$100,000.00 plus interest, costs, attorney's fees and dismissal of the counterclaims.

Respondent Bassini requested dismissal of the claim. Bassini requested in his counterclaim damages in the amount of \$350,000.00 plus attorney's fees in the approximate amount of \$25,000.00 and punitive damages of \$100,000.00.

Respondent Linsco requested dismissal of the claim. Linsco requested in its counterclaim damages in the amount of \$14,786.13 plus attorney's fees, costs and interest.

OTHER ISSUES CONSIDERED & DECIDED

During the course of the hearing the parties advised the arbitrators that Claimant and Respondent Linsco had settled their dispute and dismissed their respective claims against each other.

Consequently, the panel has made no findings with respect to Claimant's claim against Linsco or with respect to Linsco's counterclaim against Claimant.

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 and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Bassini is found liable and shall pay to Claimant the amount of \$55,000.00.
2. Claimant's requests for punitive damages, costs, prejudgment interest and attorney's fees are denied.
3. Claimant is found not liable to Respondent Bassini and, therefore, all claims against her are hereby dismissed.
4. Respondent Bassini's requests for punitive damages and attorney's fees are denied.
5. Respondent Bassini is also found liable and shall pay to Claimant the further amount of \$750.00 as a reimbursement of the hearing session deposit previously paid by Claimant to the NASD.

OTHER COSTS

Other than the forum fees noted below the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$4,500.00 (six sessions x \$750.00 per session).

1. Respondent Bassini is hereby assessed \$4,500.00 for which the NASD shall retain the \$750.00 previously deposited by Claimant plus the \$750.00 previously paid by Respondent Bassini leaving a balance due to the NASD of \$3,000.00.
2. The NASD shall retain the \$500.00 non-refundable filing fee previously paid by Claimant to the NASD.

NASD Case Number 96-00766

Award

Page - 5 -

3. The NASD shall retain the \$500.00 non-refundable filing fee previously paid by Respondent Bassini to the NASD.

4. The NASD shall retain the \$500.00 non-refundable filing fee previously paid by Respondent Linsco to the NASD.

5. The NASD shall retain the \$350.00 member surcharge previously paid by Respondent Linsco to the NASD.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

_____/s/_____
John J. Hearn, Esq.

Public/Chairman

_____/s/_____
Elizabeth L. Clark

Public

_____/s/_____
Irving I. Hanzman

Industry

Date of Decision: March 10, 1997