

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

George W. Hawkins,

Claimant,

and

No. 96-01187

The Westcap Corp., and
National Western Life Insurance, Inc.,

Respondents.

REPRESENTATION OF PARTIES

Claimant George W. Hawkins was represented by R. Christopher Bell, Esquire, of Houston, Texas.

Respondent The Westcap Corp. was represented by I. Clay Rogers, Esquire of Fulbright & Jaworski, LLP, located in Houston, Texas.

Respondent National Western Life Insurance, Inc. was represented by D'Wayne M. Massey, Esquire of Vinson & Elkins, located in Houston, Texas.

CASE INFORMATION

Claimant George W. Hawkins' Statement of Claim was filed on or about March 19, 1996.

Claimant George W. Hawkins' Submission Agreement was signed on March 12, 1996.

Respondent The Westcap Corp.'s Statement of Answer was filed on or about August 22, 1996.
Respondent The Westcap Corp.'s Amended Statement of Answer was filed on or about February 6, 1997.

Respondent The Westcap Corp.'s Submission Agreement was signed on August 20, 1996 by Linda Hannan, Secretary/Treasurer of The Westcap Corp.

Respondent National Western Life Insurance, Inc.'s Statement of Answer was filed on or about October 30, 1996.

Respondent National Western Life Insurance, Inc.'s Submission Agreement was signed on February

27, 1997 by Robert L. Busby III, Sr. Vice President, CFO, Treasurer and CAO of National Western Life Insurance Company.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on: March 11, 1997 for two (2) sessions; March 12, 1997 for two (2) sessions; and March 13, 1997 for one (1) session.

The hearing was held in Houston, Texas.

CASE SUMMARY

Claimant George W. Hawkins ("Claimant") brought this action to recover damages that had allegedly been done to his reputation and damages that will likely occur in the future due to his previous employers', Respondents The Westcap Corp. and National Western Life Insurance, Inc.'s malicious publication of libelous material.

Claimant alleged that on or about April 6, 1995, The Westcap Corp. ("Westcap") filed a Uniform Termination Notice for Securities Industry Registration (the "U-5 form"), regarding Claimant, with the NASD, stating that Claimant had been discharged for unprofessional conduct.. However, according to Claimant, he voluntarily terminated his employment with Westcap on March 31, 1995. Claimant asserted that Westcap and National Western Life Insurance, Inc. ("National") were liable for defamation, and, as complained of here, constituted libel *per se* under Texas law. According to Claimant, the identity of Westcap and National were in substance one and the same.

Respondent Westcap denied the allegations set forth in the Statement of Claim as they related to any wrongdoing on its part. Westcap stated that Claimant was terminated on March 31, 1995 because, while he was still an employee of Westcap, he attempted to recruit another Westcap employee to go to work for a new venture. According to Westcap, Claimant attempted to recruit this employee on March 28, 1995 and March 29, 1995, and thereafter denied ever trying to recruit another employee. Westcap asserted that on March 31, 1995, Steve Stubbs, Chief Executive Officer of Westcap, had a letter typed terminating Claimant's employment at Westcap, and attempted to serve it on him at approximately 2:30 pm, but could not because Claimant had already left the office. Westcap further asserted that a courier service was unsuccessful in its attempts to deliver the letter to Claimant on Saturday, April 1, 1995 due to frustration by Claimant or someone acting on his behalf. Westcap stated that the letter was sent via certified mail at 10:30 a.m. on Monday, April 3, 1995. Finally, Respondent argued that any statements made to the NASD on the U-5 termination notice for Claimant were privileged and not grounds for libel or any claim for damages.

National also denied the allegations set forth in the Statement of Claim as they related to any wrongdoing on its part. National stated that it owned 100% of the stock of Westcap, but was not a party to any arbitration agreement with Claimant and declined to voluntarily participate in this arbitration. National further stated that it took no part in either the hiring or termination of Claimant, and that since it was not a member of the NASD, it did not file anything regarding Claimant's termination with the NASD or contribute to any of the statements made in the U-5 filed by Westcap. According to National, because it was just the parent of Westcap, the liability of Westcap, if any, did not extend to National. Nevertheless, National contended that it was informed and believed that the U-5 completed by Westcap was absolutely true in all respects.

RELIEF REQUESTED

Claimant George W. Hawkins requested an award for: damages in the amount of \$500,000; interest, as provided by law until paid; and costs and attorney's fees.

Respondent The Westcap Corp. requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

Respondent National Western Life Insurance, Inc. requested that the claims asserted against it be denied and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Pursuant to Hawkins v. The Westcap Corp., and National Western Life Insurance, Inc., No. 95-046337 (Texas Dist. Ct. Sept. 26, 1996) (Amended Order Compelling Arbitration), all parties, Plaintiff, George Hawkins, and Defendants, The Westcap Corporation and National Western Life Insurance, Inc., were compelled to arbitrate this cause pursuant to the rules of the NASD.

On or about February 6, 1997, the undersigned panel of arbitrators granted Respondent The Westcap Corp.'s unopposed motion for leave to file its Amended Statement of Answer.

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

1. That Respondent The Westcap Corp. is liable for and shall pay Claimant George W. Hawkins compensatory damages in the amount of \$200,000;
2. That Respondent The Westcap Corp. is liable for and shall pay Claimant George W. Hawkins attorneys' fees in the amount of \$66,000;
3. That Respondent The Westcap Corp. is liable for and shall pay Claimant George W. Hawkins simple interest on the total amount awarded, \$266,000, accruing at the rate of 11.5% per annum from the date of the award until paid;
4. That Respondent The Westcap Corp. is hereby directed to file a revised U-5 that reflects that George W. Hawkins was voluntarily terminated and that removes the negative statement "unprofessional conduct" from the U-5;
5. Any and all claims asserted against Respondent National Western Life Insurance Corp. in this matter are, and each of them, hereby dismissed with prejudice; and
6. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were five (5) hearing sessions $\times \$750 = \$3,750$ in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (the "Code") a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

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 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant George W. Hawkins.

The Westcap Corp. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$2,500 in forum fees.

The Westcap Corp. is liable for and shall reimburse Claimant George W. Hawkins the amount of \$750 for his hearing session deposit.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall

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retain the \$500 member surcharge previously paid by Respondent The Westcap Corporation.

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

Concurring Arbitrators' Signatures

Christine E. Monical, Esquire
Christine E. Monical, Esquire
Chairperson
Public Arbitrator

May 24, 1997
Dated:

James M. Alexander
James M. Alexander
Panelist
Public Arbitrator

May 28, 1997
Dated:

Thomas A. Thornhill, Jr.
Thomas A. Thornhill, Jr.
Panelist
Industry Arbitrator

May 23, 1997
Dated:

For NASD use only:

Date Award was served on the parties: June 2, 1997