

NASD REGULATION AWARD

NASD REGULATION, INC.

---

In the Matter of the Arbitration Between

Name of Claimant

Interstate/Johnson Lane

96-01374

Name of Respondent

Geoffrey Nadler

---

**REPRESENTATION**

For Claimant, Interstate/Johnson Lane ("Claimant"), appeared, Pamela P. Warnement, Esq., in-house counsel for the claimant located at Charlotte, North Carolina.

For Respondent, Geoffrey Nadler ("Respondent"), appeared, William Paul Mason, Esq., of the law firm Weener & Mason located at Atlanta, Georgia.

**CASE INFORMATION**

The Statement of Claim was filed on March 27, 1996. Claimant's Submission Agreement was signed on March 27, 1996.

The Statement of Answer and Counterclaim was filed by respondent on June 7, 1996. Respondent's Submission Agreement was signed on June 7, 1996.

Claimant's Response to Counterclaim was filed on July 5, 1996.

**HEARING INFORMATION**

|                         |                   |   |              |
|-------------------------|-------------------|---|--------------|
| Hearing dates/sessions: | February 18, 1997 | - | Two Sessions |
|                         | February 19, 1997 | - | Two Sessions |

The hearings were held at the Nikko Hotel located in Atlanta Georgia.

CASE SUMMARY

Claimant alleged that it is a registered broker/dealer and that on February 21, 1995 respondent executed an Employment Agreement (the "Agreement") and Promissory Note (the "Note") and commenced employment with it. Claimant further alleged that, under the terms of the Note, respondent agreed to repay \$125,000.00 if his employment were to be terminated prior to the expiration of four (4) years from the initial date of his employment with the claimant. Claimant also alleged that, pursuant to the terms of the note, the principal amount was to be forgiven at the rate of 1/48 per month for each full month of respondent's employment with the claimant. Claimant asserted that, on August 25, 1995, it terminated respondent's employment leaving a balance immediately due and payable of \$109,375.00. Claimant further asserted that it made oral and written demand for payment and respondent failed to respond. Claimant also asserted that respondent purchased a computer with \$2,000.00 given to him for business expenses and did not returned it to the claimant.

Respondent maintained that, from 1983 through 1994, he was a securities broker for an Atlanta branch of Dean Witter Reynolds ("Dean Witter"). Respondent further maintained that, during his tenure with Dean Witter, he accumulated approximately 600 accounts worth \$30 million. Respondent also maintained that, in an effort to induce him to work for the claimant, he was offered: significant assistance to transfer his accounts from Dean Witter to the respondent; \$125,000.00 in cash to be forgiven at the rate of 1/48th per month; a \$2,000.00 expense allowance; and full health insurance coverage for his entire family including his disabled daughter. Respondent contended that, in reliance on these representations, he went to work for the claimant and transferred from Dean Witter 32% of his customer asset base and 48% of his commission revenue for the previous twelve months. Respondent further contended that it was impossible for him to transfer all of his Dean Witter accounts because many were in long term nontransferable investments. Respondent also contended that, before accepting employment, claimant assured him the transfer of his Dean Witter accounts would be smooth and claimant would be responsible for everything. Respondent alleged that, because of the way claimant handled the transfer, accounts were lost, not transferred, or transferred improperly. Respondent further alleged that his customers blamed him for the problems with the transfers and although they stayed with the claimant, they ceased doing business with him. Respondent also alleged that claimant conveyed false and defamatory information to his clients in an effort to dissuade them against him.

Respondent maintained that, after working for the claimant for ten weeks, he was the second largest gross production broker for the month within his office. Respondent further maintained that, in August 1995, after his Dean Witter accounts and clients had been transferred, claimant wrongfully terminated him, keeping his clients and portfolio of approximately \$9,500,000.00. Respondent also maintained that, as the result of claimant's conduct, he lost his entire client and account portfolio to claimant.

Respondent alleged, as affirmative defenses, that claimant's Statement of Claim failed to state a claim upon which relief may be granted, claimant is barred because of its theft and conversion of his accounts, claimant is barred under the doctrines of estoppel and unclean hands, claimant is barred by the failure of consideration, claimant's claim is subject to setoff, claimant is barred by its slander of respondent, claimant is barred because of its failure to mitigate its damages, and claimant is barred by its fraud in luring respondent away from Dean Witter under false pretenses.

Respondent, in his Counterclaim contended that claimant breached its contract of employment with him by not properly transferring his accounts. Respondent further contended that claimant converted his clients and accounts for its own use and benefit. Respondent also contended that, during employment negotiations, claimant made certain false and material misrepresentations regarding, among other things,

its operational capabilities, support staff, rewards and health insurance benefits which claimant knew to be false when it made them and which claimant relied on to his detriment respondent alleged that claimant has slandered him by publishing false, fraudulent and defamatory information regarding him to third parties.

Claimant, in its response to respondent's Counterclaim, alleged that the respondent initiated the employment negotiations and indicated that he was confident he could convince his clients to transfer their accounts to the respondent. Claimant further alleged that its compensation and bonus payment were made with the clear understanding that the respondent would be able to transfer a substantial amount of his business within the near future. Claimant also alleged that for the most part the client transfer went smoothly. Claimant asserted that respondent did not work diligently to service his existing clients or develop new business and that claimant sent out over 300 account transfer packages but respondent only transferred 80 of them. Claimant further asserted that after several months of the respondent not meeting his professional obligations, he was fired. Claimant also asserted that it waited a period of time after the termination to assign other brokers to contact respondent's previous clients. Claimant contended that it never made false or defamatory statements to clients who had previously worked with the respondent. Claimant further contended that it never had an employment contract with the respondent and that he worked as an employee-at-will. Claimant also contended that, to the extent there has been a breach of contract, it was committed by respondent by his failure to use his best efforts on behalf of the claimant. Claimant maintained that it never promised respondent a 2 to 1 broker to sales assistant ratio, but did provide him with 3 to 1 sales support and other assistance as he needed it.

#### **RELIEF REQUESTED**

Claimant requested the following relief against the respondent: An award in the amount of \$109,375.00, plus interest from August 25, 1995; an award in the amount of \$2,000.00 plus interest from August 25, 1995; an award of the filing and hearing session fees paid by the claimant; and that the remainder of the hearing fees be assessed against respondent.

Respondent requested: An award of unspecified damages in an amount to be determined at the hearing in this matter; an award of his attorney's fees, costs and expenses associated with this action.

#### **OTHER ISSUES CONSIDERED AND 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. Respondent Geoffrey Nadler be and hereby is liable and shall pay to the claimant, Interstate/Johnson Lane Corporation, \$109,375.00 in connection with the loan made to him. The award shall bear interest at the rate of 6% from August 25, 1995 until payment is made to Interstate/Johnson Lane Corporation.

2. Respondent's counterclaim against Interstate/Johnson Lane Corporation is dismissed in its entirety.
3. All requests for attorney fees are denied.
4. All other requests for relief are denied.

#### **FORUM FEES**

Pursuant to Rule 10205 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee previously deposited by the claimant and the \$600.00 filing fee previously deposited by the respondent and have assessed the following forum fees:

|                            |              |
|----------------------------|--------------|
| 4 Hearing Sessions x \$750 | = \$3,000.00 |
|----------------------------|--------------|

Respondent, Geoffrey Nadler, is liable for \$3,000.00 representing the total amount of forum fees assessed. Respondent previously deposited \$500.00 and claimant previously deposited \$750.00. Therefore, Respondent, Geoffrey Nadler, shall pay to NASD Regulation, Inc. the sum of \$1,750.00. and shall reimburse the claimant, \$750.00.

Fees are payable to NASD Regulation, Inc.

Page Five  
Award 96-01374

**ARBITRATORS' SIGNATURES**

  
\_\_\_\_\_  
Roger A. Kirschenbaum, Esq.

Date of Decision 4/28/97

\_\_\_\_\_  
Kendall P. Hill

\_\_\_\_\_  
John R. Williams

ARBITRATORS' SIGNATURES

\_\_\_\_\_  
Roger A. Kirschenbaum, Esq.

Kendall P Hill  
Kendall P. Hill

Date of Decision 4/28/97

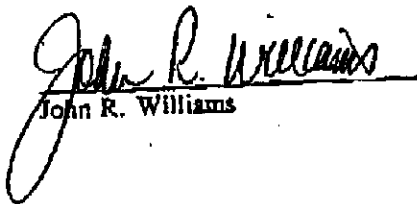
\_\_\_\_\_  
John R. Williams

Page Five  
Award 96-01374

**ARBITRATORS' SIGNATURES**

\_\_\_\_\_  
Roger A. Kirschenbaum, Esq.

\_\_\_\_\_  
Kendall P. Hill

  
John R. Williams

Date of Decision 4/28/97