

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Name of Claimant(s)

The Lincoln National Life Insurance Company
Lincoln Cascades, Inc.
Paul S. Lewis
Daniel E. Fenker
Maira Cordova

v.

Arbitration No.
96-01493

Name of Respondent(s)

Elizabeth Dann
Northwest Fringe Benefits, Inc.

REPRESENTATION

For Claimants: Christopher B. Wells, Esq.
Lane Powell Spears Lubersky
Seattle, Washington

For Respondent: Gregory A. Hartman, Esq.
Bennett, Hartman, Reynolds & Wiser
Portland, Oregon

CASE INFORMATION

Statement of Claim filed: April 8, 1996
Amended Statement of Claim filed: April 22, 1996
Second Amended Statement of Claim filed: February 3, 1997

Statement of Answer and Counterclaims filed: May 24, 1996
Second Amended Answer and Counterclaims filed: February 24, 1997

Claimants' Response to Counterclaims filed: March 25, 1997

Stipulated Joint Submission Agreement adding non-NASD member firms Lincoln Cascades and Northwest Fringe Benefits to this action signed: April 28, 1997 and March 3, 1998

Other Submission Agreements signed as follows:

The Lincoln National Life Insurance Co.: March 28, 1996

Paul S. Lewis: April 17, 1996

Daniel E. Fenker: April 18, 1996

Moirá Cordova: April 16, 1996

Elizabeth Dann: May 21, 1996

HEARING INFORMATION

A pre-hearing telephone conference lasting one session was held on August 14, 1997.

The evidentiary hearing was held in Portland, Oregon, as follows:

March 2, 1998	-	2 sessions
March 3, 1998	-	2 sessions
March 4, 1998	-	2 sessions
March 5, 1998	-	2 sessions
March 6, 1998	-	2 sessions

CASE SUMMARY

Claimants allege that in February 1996, Lincoln Life terminated Ms. Dann's agencies to sell securities through and insurance issued by Lincoln, because Ms. Dann had disseminated to customers sales materials that had not been preapproved, as required by Lincoln policies, and would not have been approved, because it contained misleading statements soliciting the purchase of securities - the Multifund variable annuity.

Claimants also allege that not only were Ms. Dann's statements in her memo unauthorized and misleading, they contradicted recent written instructions from top Lincoln sales management on the very subject of Mr. Dann's memo. Moreover, as early as 1990 and as recently as November 1995, Ms. Dann had been cautioned repeatedly against disseminating sales material without prior Home Office approval.

After Ms. Dann was terminated by Lincoln, she continued to misrepresent her authority to sell and service Lincoln annuities, and was preliminarily enjoined from continuing these practices by a Washington state court. Under applicable Washington statutes, Lincoln seeks \$45,000.00 in actual damages and \$10,000.00 in exemplary damages, or alternatively, \$45,000.00

incurred to obtain the injunction. Lincoln requests conversion of the preliminary injunction into a permanent injunction, and recovery of \$5,503.01 plus prejudgment interest on Ms. Dann's laptop computer purchase obligation.

Ms. Dann and her d.b.a. corporation, Northwest Fringe Benefits ("NFB"), counterclaim for damages for breach of Dann's contracts with Lincoln, alleged oral agreements involving Lincoln, Washington Hospital Services ("WHS") and NFB, tortious interference with Lincoln and WHS agreements by claimant Daniel Fenker and damages for defamatory statements by Lincoln in Dann's form U-5 termination report and related oral statements by Mr. Fenker. Claimants allege that Ms. Dann cannot recover because she, rather than Lincoln, breached her contract, which permitted her termination at will, in any event. Claimants deny that Ms. Dann was defamed by the U-5 report or any oral statement concerning her termination, and deny she sustained any loss of income through any unlawful act of any claimant. Any decline in Ms. Dann's income after her termination by Lincoln was the product of her own conduct. Claimants assert that NFB has no standing to recover damages of any kind, because it has never earned any revenue or paid expenses, has therefore never earned a profit, can sustain no loss of past or future profits and is not licensed to receive the requested future commission income. Moreover, Dann's and NFB's conduct in supplying false information to licensing regulators at various points in time estops them from any recovery under any theory they have contrived.

Respondents allege that in 1990, Ms. Dann became an authorized representative of Lincoln Life working out of the Portland office of Lincoln Cascades, under the supervision of Mr. Daniel Fenker. Lincoln Cascades is the regional marketing office (RMO) of Lincoln Life. During her years with Lincoln Life, Ms. Dann was one of the most successful agents in the RMO and was named "Agent of the Year" in 1990 and 1994. Although Ms. Dann was recognized by Lincoln Life as a high producer, Ms. Dann did not receive the staff support she requested and was entitled to from her regional managing officer, Mr. Fenker. By 1994, Ms. Dann's relationship with Mr. Fenker had deteriorated to the point that she was seriously considering moving to the Seattle office of Lincoln Cascades and from there, finding a position with another broker-dealer. Ms. Dann discussed her concerns with Mr. Fenker, who vehemently opposed such a move. Despite Mr. Fenker's objections, in January of 1996, Ms. Dann moved to the Seattle office of Lincoln Cascades.

In January of 1996, Lincoln Life announced the purchase of a block of business from UNUM Life Insurance. In February of 1996, Ms. Dann faxed a memo to four Washington hospitals reminding them of the WHA endorsed product which she had already reviewed with each of them. The memo was brought to the attention of Lincoln Life by UNUM executives, who were angry that a Lincoln Life agent was soliciting their clients while a deal between Lincoln Life and UNUM to purchase UNUM was pending. Fearing that its deal with UNUM was in jeopardy, Lincoln Life executives summarily fired Ms. Dann. In addition, both Lincoln Life and Mr. Fenker made defamatory statements about Ms. Dann and engaged in conduct which interfered with Ms. Dann's outstanding contracts. As a result of that misconduct, Ms. Dann and NFB have suffered substantial damages, including loss of commissions, profits, and reputation.

Ms. Dann and NFB bring two claims against Lincoln Life for breach of the covenant of good faith and fair dealing inherent in its Career Producer Contract with Ms. Dann and for breach of its oral exclusive representative agreement with NFB. The remainder of the claims of Ms. Dann and NFB against Lincoln Life, Lincoln Cascades, and Mr. Fenker consist essentially two types of claims. These claims allege that Lincoln Life, Lincoln Cascades acting through its principal Dan Fenker, and Mr. Fenker tortiously interfered with the business relations and expectancies of Ms. Dann and NFB and that they defamed Ms. Dann and NFB.

Ms. Dann alleges that the actions taken by Lincoln Life, Lincoln Cascades acting through its principal Dan Fenker, and Mr. Fenker, leading up to and following Ms. Dann's termination, were motivated by bad faith and ill will toward Ms. Dann. Fearing that it was in jeopardy of losing its contract with UNUM, Lincoln Life decided to "make an example" of Ms. Dann by not only terminating her, but also by taking affirmative steps to prevent Ms. Dann from continuing her profession through an association with another agency. Mr. Fenker acted in concert with Lincoln Life and encouraged Lincoln's actions by falsely claiming that Ms. Dann had been involved in a series of improper activities further justifying harsh action against her. As a result of these bad faith actions of Lincoln Life, Lincoln Cascades, and Mr. Fenker, Ms. Dann and NFB have lost commissions, profits, the NFB contracts with WHS and with WSNA, and their credibility in the industry.

Lincoln Life Insurance Company ("Lincoln Life") brings five claims against Ms. Dann and NFB, under an alter-ego theory, for retention of Lincoln Life policyholder cards, other documents, and computer hardware and software and for contacting WHS member hospitals following her termination. Respondents assert that the nature of any interference was minimal and was based upon good faith and reasonable basis, and that Lincoln Life suffered no damages. Therefore, these claims should be dismissed.

RELIEF REQUESTED

Claimants requested the preliminary injunction be converted to a permanent injunction. Claimants requested compensatory damages of \$45,000.00 pursuant to Washington Statute RCW Chap. 19.86 (Unfair Business Practices - Consumer Protection Act), \$10,000.00 in exemplary damages, \$ 5,503.01 plus interest as reimbursement for the computer payments made on Ms. Dann's laptop computer, attorney's fees pursuant to RCW 4.84.185, and dismissal of all counterclaims.

Respondents requested dismissal of all claims stated by Claimants. On their counterclaims, Respondents requested damages in excess of \$5 million.

OTHER ISSUES CONSIDERED AND DECIDED

This preliminary injunction action was filed in King County (Washington) Superior Court,

case# 96-2-07570-1 SEA, on April 22, 1996, Marsha Pechman, Judge.

Prior to hearing, Respondents dismissed all outstanding counterclaims stated against Paul S. Lewis and Moira Cordova.

The parties have agreed to receive conformed copies of the Award while the originals remain on file with NASDR, Inc.

AWARD

The undersigned arbitrators, having considered the pleadings, the testimony and the evidence presented at the hearing, and the post-hearing submissions, have determined in full and final resolution of the issues submitted for determination as follows:

With respect to the claims of Claimants:

1. No permanent injunction will be issued.
2. Respondents are jointly and severally liable for and shall pay to Claimants the sum of \$5,500 in full satisfaction of the claims for reimbursement for computer laptop payments.
3. Pursuant to RCW 19.158.130, Respondents are jointly and severally liable for and shall pay to claimants attorney's fees of \$20,000.00.
4. All other claims are dismissed.

With respect to the Counter claims of Respondents, the panel finds and concludes as follows:

Without obtaining home office approval, which she knew was required, Respondent Dann wrote a memorandum which she distributed to potential investors and which contained statements which she knew were unauthorized, inaccurate and potentially misleading. This motivated and justified (a) the termination by claimants of their contractual relationship with the Respondents, (b) the reporting of such termination on Form U-5, which was both accurate and required, and (c) Claimants' limited announcement of such termination and the reason therefor. Any damage done to Respondents' reputations and business relationships was the result of Respondent Dann's own conduct, as described above. Accordingly, Respondents' counterclaims for relief are denied.

FORUM FEES

Pursuant to Section 10205 of the Code of Arbitration Procedure, the NASDR shall retain the parties' non-refundable filing fees (Claimants' \$500.00 and Respondents' \$500.00).

Forum fees are assessed as follows:

Total Fees

One pre-hearing telephone conference (3 arbitrators)
@ \$1500/session

\$ 1,500.00

Ten hearing sessions @ \$1500/session

\$15,000.00

Total: \$16,500.00

Claimants' one-third share

\$ 5,500.00

Credit for deposit

(\$ 600.00)

Balance Due: \$ 4,900.00

Respondents' two-thirds share

\$ 11,000.00

Credit for deposit

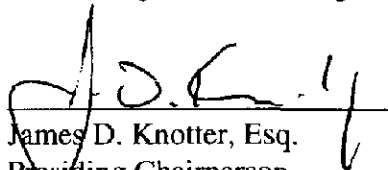
(\$ 1,500.00)

Balance Due: \$ 9,500.00

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

Concurring Arbitrators Signatures:

Date signed:


James D. Knotter, Esq.
Presiding Chairperson
Public Arbitrator

4/11/98

John J. Dunbar, Esq.
Public Arbitrator

John E. Bates
Securities Industry Arbitrator

Date served: 4/29/1998

Forum fees are assessed as follows:

Total Fees

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\$ 1,500.00

Ten hearing sessions @ \$1500/session

\$15,000.00

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

Concurring Arbitrators Signatures:

Date signed:

James D. Knotter, Esq.

Presiding Chairperson

Public Arbitrator

John J. Dunbar

John J. Dunbar, Esq.

Public Arbitrator

4/27/98

John E. Bates

Securities Industry Arbitrator

Date served: 4/29/1998

Forum fees are assessed as follows:

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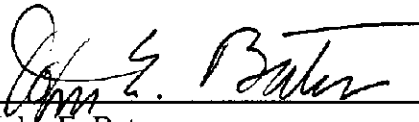
Fees are payable to the National Association of Securities Dealers Regulation, Inc.

Concurring Arbitrators Signatures:

Date signed:

James D. Knotter, Esq.
Presiding Chairperson
Public Arbitrator

John J. Dunbar, Esq.
Public Arbitrator



John E. Bates
Securities Industry Arbitrator

04-19-98

Date served: 4/29/1998