

9708099

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Wheat First Securities, Inc.

96-04424

Name of Respondent

Jeffrey L. Cox

REPRESENTATION

Claimant Wheat First Securities, Inc. ("Claimant") was represented by Mark J. Krudys, Esq., LeClair Ryan, Richmond, VA.

Respondent Jeffrey L. Cox ("Respondent") was represented by Philip J. Murren, Esq., Ball, Skelly, Murren & Connell, Harrisburg, PA.

CASE INFORMATION

The Statement of Claim was filed October 4, 1996.  
Claimant's Uniform Submission Agreement was signed October 2, 1996.

The Statement of Claimant's Uniform Submission Agreement

Respondent's Statement of Answer was filed December 3, 1996.  
Respondent's Uniform Submission Agreement was signed December 3, 1996.

Respondent's Statement of Answer

HEARING INFORMATION

Hearing Dates/Sessions: March 20, 1997/two sessions  
April 29, 1997/two sessions

Hearing Location: NASD Regulation District Office  
Philadelphia, PA

Hearing Dates/Sessions: May 13, 1997/two sessions

Hearing Location: Doubletree Hotel  
Philadelphia, PA

Hearing Dates/Sessions: July 22, 1997/two sessions

Hearing Location: NASD Regulation District Office  
Philadelphia, PA

CASE SUMMARY

Claimant alleged that Respondent was hired as a financial consultant in Claimant's Harrisburg, Pennsylvania office in March 1995. Claimant alleged that as is customary in the securities industry, Claimant made a loan to Respondent to facilitate Respondent's change in employment. Claimant alleged that Respondent executed a Promissory Note ("note") on March 10, 1995 in the principal amount of \$243,200.00, plus interest, payable to Claimant as set forth in the note. Claimant alleged that an important part of Respondent's letter agreement with Claimant was his representation that his 1994 gross production at his prior employer was approximately \$608,000.00. Claimant alleged that in fact, Respondent's representation of his 1994 gross production was false and, in reality, Respondent's 1994 gross production was \$187,159.00. Claimant alleged that had Respondent represented the truth about his 1994 production, Claimant would never have hired Respondent. Accordingly, Claimant alleged that Respondent procured the loan and his employment through fraud.

Claimant alleged that Respondent carried out his fraud through a number of acts of deception, the most blatant of which was altering copies of his 1993 and 1994 gross commission production. Claimant alleged that Respondent changed the date of his 1993 gross commission production to 1994 and his 1992 gross commission production to 1993 and increased the level of gross production by exactly \$200,000.00. Additionally, Claimant alleged that during a recruiting trip to Claimant's main office in Richmond, Virginia, Respondent held himself out as a \$600,000.00 producer in 1994 when speaking with Steve Monheim ("Monheim"), Regional Manager and Douglas Charney, Branch Manager. Claimant alleged that Respondent admitted that Monheim told him that since Respondent's 1994 gross commission production exceeded \$500,000.00, Respondent would be entitled to his own secretary. Claimant alleged that Respondent also lied about his 1994 gross commission production to representatives of a recruiting firm consulted by Claimant in connection with Respondent. Claimant alleged that the recruiting firm informed them that Respondent told recruiters that he had gross commission production of \$620,102.00 in 1993 and \$608,866.00 in 1994 respectively, which coincided with the figures on the altered documents provided to Claimant. Furthermore, Claimant alleged that Respondent admitted that he falsified his 1994 income on his application for employment with Claimant, which helped to conceal the false information on the gross commission production runs.

Claimant also alleged that Respondent was the subject of a number of customer complaints while employed with Claimant, including complaints regarding unauthorized purchases of securities.

Claimant alleged that Respondent's letter agreement with Claimant provided that the note would be forgiven over a five-year period with one-fifth of the principal amount, plus accrued interest, being forgiven each year. Claimant asserted that Respondent completed one full year of employment which would have resulted in the forgiveness of one-fifth of the principal amount plus accrued interest if Respondent had not been guilty of defrauding Claimant with respect to his prior employment production records. Thus Claimant alleged that the entirety of the note became due based on the terms of the note. In addition, Claimant asserted that the terms of the note required that Respondent also pay all expenses incurred in collecting any indebtedness under the note, including reasonable attorney's fees.

Respondent maintained that his agreement to join Claimant as a broker in the Harrisburg, Pennsylvania office was procured by Claimant through material misrepresentations which induced Respondent to leave a secure position with Prudential Securities, a national firm. Respondent maintained that after joining Claimant, he came to realize that Claimant did not intend to fulfill the promises it had made to him regarding sales assistance support, operational support, managerial support and customer service. Respondent maintained that as a result, his customers became dissatisfied with Claimant as well.

Respondent denied all allegations that he made any misrepresentations to any of Claimant's representatives concerning his actual gross commission production at Prudential Securities. Respondent even brought to the attention of Claimant a discrepancy in the written agreement he was asked to sign on March 9, 1995 as it did not reflect his understanding of the negotiations between himself and Claimant concerning the basis for the calculation of his transition compensation. Respondent contended that he believed that the transition compensation was to be based upon his highest production year (1993), whereas the agreement stated that the compensation would be based upon the "last twelve months." Respondent maintained that in bringing his discrepancy to Claimant's attention, it was obvious that his intent was not to work any deception upon Claimant or to defraud Claimant by concealing material information in the hope that Claimant would not learn his true production figures.

9. Respondent would be entitled to his own secretary. Claimant alleged that on or about 1993-94 Respondent would be a 1994 gross commercial production of \$243,200.00. Claimant alleged that the return of the 1994 gross commercial production with Respondent. Claimant alleged that the return of the 1994 gross commercial production with Respondent. Claimant requested relief of \$243,200.00 plus interest and all costs and expenses incurred in collecting and relief on the note, including attorney's fees, totaling \$42,203.00. The above relief is for the 1994 gross commercial production. Furthermore, Claimant alleged that Respondent alleged that the 1994 gross commercial production. Furthermore, Claimant requested that the Statement of Claim be denied in its entirety.

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.

The panel considered Claimant's motion to strike Respondent's affirmative defenses and preclude the taking of testimony thereon and Respondent's Response thereto and denied the motion.

The panel also considered Respondent's motion to file a counterclaim pursuant to NASD Regulation Rule 10328(b) during the course of the hearing, and Claimant's Response thereto, and denied the motion.

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**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. That Respondent is liable to and shall pay to Claimant \$243,200.00.
2. That each party shall bear its own costs and expenses, including attorney's fees, with the exception of the Forum Fees as discussed below.
3. That any and all relief, not specifically addressed herein, is denied.

**FORUM FEES**

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

8 sessions x \$750.00 = \$6000.00

Forum Fees are assessed to Claimant at \$3,000.00 and to Respondent at \$3,000.00. Claimant is to receive credit for the \$750.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimant of \$2,250.00. Respondent has a net assessment due of \$3,000.00.

Pursuant to Rule 10399 Claimant is assessed a member surcharge of \$350.00. Claimant is to receive credit for the \$350.00 surcharge deposit previously submitted to the NASD Regulation, leaving no further surcharge due from Claimant.

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

**DATE**

8/10/97

**CONCURRING ARBITRATORS' SIGNATURES**

Sheldon Seligsohn  
Sheldon Seligsohn, Presiding  
Public Arbitrator

Malcolm P. Maples, Jr.  
Malcolm P. Maples, Jr.  
Public Arbitrator

Jerry Brown  
Jerry Brown  
Industry Arbitrator

Date Decision Served by NASD Regulation: August 19, 1997

97102099

**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:

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Pursuant to Rule 10333 Claimant is assessed a member surcharge of \$350.00. Claimant is to receive credit for the \$350.00 surcharge deposit previously submitted to the NASD Regulation, leaving no further \$350.00 surcharge due from Claimant.

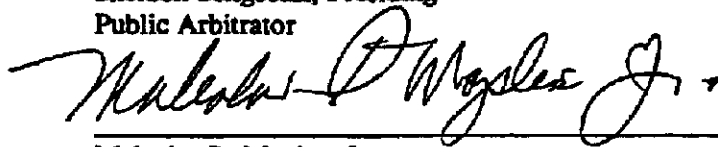
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Public Arbitrator

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Malcolm P. Maples, Jr.  
Public Arbitrator

aug. 4-1997

  
Jerry Brown  
Industry Arbitrator

Date Decision Served by NASD Regulation:

August 19, 1997