

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.

96-04454

Name of Respondent

James R. Lane

REPRESENTATION

Claimant Wheat, First Securities, Inc. ("Claimant") was represented by Gabriel Holdsman, Esq., Conrad O'Brien, Philadelphia, PA.

Respondent James R. Lane ("Respondent") was represented by Mitchell N. Cobert, Esq., Morristown, NJ.

CASE INFORMATION

The Statement of Claim was filed October 7, 1996.

Claimant's Uniform Submission Agreement was signed October 1, 1996.

Respondent's Statement of Answer was filed November 27, 1996.

Respondent's Uniform Submission Agreement was signed November 27, 1996.

HEARING INFORMATION

Hearing Date/Sessions: May 16, 1997/two sessions

Hearing Location: NASD Regulation District Office
Philadelphia, PA

CASE SUMMARY

Claimant alleged that Respondent was hired in July, 1994 as a Financial Consultant. Claimant further alleged that when Respondent was hired he executed a promissory note ("note") in the principal amount of \$39,174.00, plus interest, payable to Claimant over a five-year period. Claimant alleged that the terms of the note were that one-fifth of the note would be forgiven, with interest, at the conclusion of each full year of employment. Claimant alleged that as Respondent completed two full years of employment the note was reduced by \$15,669.60. In addition, Claimant alleged that the terms of the note obligated Lane to pay all expenses incurred in collecting any indebtedness under the note, including reasonable attorney's fees.

Respondent maintained that while there was a balance under the note of \$24,630.53, Claimant did not act in good faith in terminating his employment and alleged that they libeled him by saying on the Termination Form U-5 that he was "permitted to resign prior to termination for lack of production." Respondent maintained that he had been an employee of Merrill Lynch Pierce Fenner and Smith for seven years and was induced to join Claimant in July 1994 as an investment officer due to his experience and background. As an officer, Respondent Claimant promised Respondent a higher payout schedule and more administrative and marketing support. However, for the first four months of his employment, Respondent had no administrative assistant and when one was finally assigned, she had no industry knowledge or experience and was to subordinate Respondent's administrative tasks to those of the remainder of the office. Respondent maintained that this had an extremely negative impact on his production and on his clients' accounts. Respondent maintained that even though his commissions were very close to the minimum target amount, he was informed on July 17, 1996 to resign or he would be terminated. Respondent maintained that Leonard Troum, branch office manager, assured him that if he resigned there would be no negative language on his Form U-5. Respondent maintained that due to the language used on the Form U-5, Respondent has not been able to obtain subsequent employment in the industry. Respondent further maintained that Claimant acted in bad faith from the beginning of his employment in that Claimant imposed a monthly gross commission requirement of which he had no prior knowledge and then Claimant arbitrarily shortened the probationary period making it impossible for Respondent to meet the new figures.

RELIEF REQUESTED

Claimant requested \$24,630.53, plus pre-award interest since September 1996 and the costs and expenses associated with this arbitration including reasonable attorney's fees.

Respondent requested that an award be made in his favor and the note should be forgiven.

OTHER ISSUES CONSIDERED & 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. That Respondent is liable to and shall pay to Claimant the sum of \$12,315.27.
2. That each party shall pay its own costs and expenses including attorney's fees.
3. That any 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:

2 sessions x \$600.00 = \$1,200.00

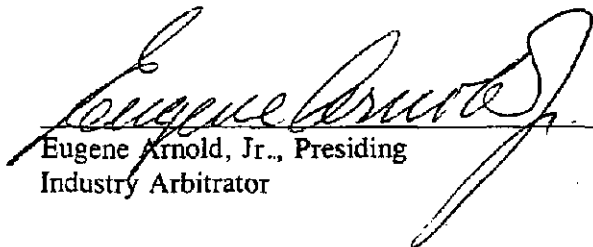
Forum Fees are assessed to Claimant and Respondent in equal amounts. Claimant shall receive credit for the \$600.00 hearing session deposit previously submitted to the NASD Regulation, leaving no further assessment from Claimant. Respondent has a net assessment due of \$600.00.

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

DATE

5/30/97

CONCURRING ARBITRATORS' SIGNATURES



Eugene Arnold, Jr., Presiding
Industry Arbitrator

Michael D. Neft
Industry Arbitrator

Charles W. Lake
Industry Arbitrator

Date Decision Served by NASD Regulation:

June 12, 1997

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Industry Arbitrator

May 29 1997

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Eugene Arnold, Jr., Presiding
Industry Arbitrator

Michael D. Neft
Industry Arbitrator

6/4/97

Charles W. Lake
Charles W. Lake
Industry Arbitrator

Date Decision Served by NASD Regulation

June 12, 1997