

9170810

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Trudie Infantini

NASD CASE NO. 96-04670

Name of Respondent

FNB Brokerage Services, Inc.
f/k/a Suite 100 Investment Services, Inc.

REPRESENTATION

For Claimant: Jim Scutti, Esq. of Jim Scutti, P.A., Boca Raton, Florida.

For Respondent: George F. Bowie, III, Esq. of Crary, Buchanan, Bowdish, Bowie, Lord, Roby & Evans, Chartered, Stuart, Florida.

CASE INFORMATION

Statement of Claim filed: October 22, 1996.

Claimant's Submission Agreement signed: September 17, 1996.

Statement of Answer filed by Respondent on: December 6, 1996.

Respondent's Submission Agreement signed: December 4, 1996 by Leonard J. Hoag, President of FNB Brokerage Services, Inc. f/k/a Suite 100 Investment Services, Inc.

HEARING INFORMATION

On March 6, 1997, a telephonic pre-hearing conference lasting one (1) session was conducted with the arbitration panel. On July 10 and 11, 1997, in Fort Lauderdale, Florida, hearings lasting five (5) sessions were conducted.

CASE SUMMARY

Claimant alleged that she was hired by Respondent under an employment contract for a period of three years commencing in March, 1995 and was terminated in October, 1995. Claimant

asserted that Respondent breached the employment agreement in that she was not paid the remaining salary owed under the contract. Claimant further alleged that the Respondent made a false statement regarding the reason for her termination on the Form U-5 that was filed with the NASD, and that the information concerning her termination was defamatory and constituted libel per se.

Respondent denied that Claimant was hired for a time certain and alleged that the employment contract was terminated for cause. Respondent further alleged that it had a duty to report the reason for the discharge under NASD rules, that it had a qualified privilege to disclose the information and that it acted in good faith. Respondent also alleged that Claimant was given the choice of voluntarily resigning and freely chose not to. Respondent asserted affirmative defenses of failure to mitigate damages under the contract, absence of mutuality and waiver.

RELIEF REQUESTED

Claimant requested general damages on her breach of contract claim in the amount of \$71,576.00 (\$46,787.00 after mitigation) and \$919,429.00 in special damages, together with pre-judgment legal interest thereon from October 26, 1995. Claimant further requested actual damages and punitive damages on her libel claim in an amount sufficient to punish the Respondent and deter others from engaging in similar conduct in the future, as well as an order from the arbitrators directing Respondent to correct the Form U-5 on file with the NASD by changing the reason stated therein for her termination to "low production". Claimant additionally requested that it be awarded all costs of maintaining this claim, together with attorney's fees and such other relief as is deemed just and proper.

Respondent requested dismissal of the claim in its entirety.

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.

At the close of Claimant's case, Respondent moved to dismiss Claimant's claim for special damages. The arbitration panel deferred ruling on this motion until the conclusion of the proceedings.

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 is found liable for breach of contract and shall pay compensatory damages to Claimant in the amount of \$18,000.00, inclusive of pre-judgment interest.
2. Respondent is found liable and shall further pay to Claimant costs in the amount of

\$1,400.00. In addition, Respondent shall pay the sum of \$750.00 to Claimant as reimbursement for the initial hearing session deposit made by Claimant.

3. Respondent is hereby directed to file an amended Form U-5 with the NASD, changing the reason for Claimant's termination to "low production".

4. All other claims for relief including Claimant's requests for actual and punitive damages on her libel claim, special damages on her breach of contract claim and attorney's fees are denied.

FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$3,600.00 (5 sessions x \$600.00 per session, plus one pre-hearing conference with the panel x \$600.00) as follows:

1. Respondent is hereby assessed the sum of \$3,600.00, for which NASD Regulation, Inc. shall retain the \$750.00 previously deposited by Claimant in partial satisfaction thereof, leaving a balance due in the sum of \$2,850.00.

2. NASD Regulation, Inc. shall retain the \$500.00 claim filing fee previously paid by Claimant.

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

Concurring Arbitrators' Signatures

Public/Industry

_____/s/_____
Michael Lukasievich, Esq.
Chairperson

Public

_____/s/_____
Harold A. Greene, Esq.

Public

_____/s/_____
John C. Newsom

Industry

Date of Decision: August 14, 1997