

AWARD

NASD Regulation. Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

J.W. Korth & Company, a
Michigan and Florida Limited
Partnership,

Claimant.

v.

No. 96-05 184

The Chicago Corporation, a
Delaware Corporation, and
Jeffrey P. Novak, an individual.

Respondents.

REPRESENTATION OF PARTIES

Claimant J.W. Korth & Company ("Claimant" or "J.W. Korth") was represented by S. Thomas Wiener, Esq. and Seth D. Gould, Esq. of Feeney Kellett Wiener & Bush, P.C. located in Bloomfield Hills, Michigan.

Respondents The Chicago Corporation ("Chicago Corp.") and Jeffrey P. Novak ("Novak") (collectively referred to as "Respondents") were represented by Phillip M. Goldberg, Esq. and Thomas P. Krebs, Esq. of Foley & Lardner located in Chicago, Illinois.

CASE INFORMATION

The Statement of Claim? was filed on or about November 19, 1996.

Claimant's Submission Agreement was signed on December 10, 1996.

The Joint Statement of Answer was filed on or about January 29, 1997

Respondents' Joint Submission Agreement was signed on January 13, 1997

HEARING INFORMATION

The hearing was held on: June 16, 1998 for two (2) sessions; June 17, 1998 for two (2) sessions; June 18, 1998 for two (2) sessions; August 17, 1998 for two (2) sessions; and August 18, 1998

for two (2) sessions. The hearing location was Southfield, Michigan.

CASE SUMMARY

Claimant J.W. Korth and Respondent Chicago Corp. are broker-dealers who engage in the business of underwriting corporate debt securities. Respondent Novak is a Senior Vice-president at Chicago Corp. Prior to his employment at Chicago Corp., Respondent Novak was employed at J.W. Korth. While at J.W. Korth, Respondent Novak was both in charge of corporate finance and the company's inside legal counsel.

In the Statement of Claim, Claimant asserted claims against Respondents for conversation of trade secrets and confidential business information. Claimant alleged that Respondents misappropriated Claimant's process of syndicating, pricing, distributing, and selling retail corporate debt securities to a select group of its broker-dealer customers (the "Process"). Claimant asserted that the Process was developed by Claimant using years of experience in the financial markets and expertise in the retail bond market. Claimant contended that the Process requires constant consideration of fifteen (15) variables, some of which include coupon pricing, call availability, selling concessions, sales timing and the required rate of return for the investor. Claimant asserted that the Process is of tremendous economic value to Claimant and a trade secret under applicable state law. Claimant contended that it exercised reasonable efforts to preserve the confidentiality and control of the Process by refusing to disclose it to any person or entity absent assurances that the Process would remain confidential.

In the Joint Statement of Answer, Respondents alleged that the Statement of Claim has no basis in law or fact. Respondents denied that they misappropriated Claimant's customer list or the Process. Respondents contended that neither Claimant's customer list nor the Process is a trade secret. Respondents asserted that common elements of the Process are available to the general public as well as known and utilized by the entire securities industry. Respondents alleged that, even if the Process is a trade secret, Claimant failed to protect it as required by law. Respondents asserted that Claimant made no practice of requiring employees to sign confidentially agreements; it permitted files to be opened and available to employees in general; and it maintained no review process for the departure of its employees and the material that they took with them. Respondents also contended that, upon Novak's departure from J.W. Korth, Claimant and Novak executed a broad mutual release agreement which precludes Claimant from bringing its misappropriation claim against Respondents.

RELIEF REQUESTED

In the Statement of Claim, Claimant sought: (a) to recover monetary damages in an amount in excess of \$5,000,000; and (b) to enjoin Respondents from using Claimant's trade secrets when underwriting securities in the retail bond market and compelling Respondents to return customer

lists and other proprietary information unlawfully taken by Respondents.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, plus an award of attorney fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

Claimant's Motion to Amend the Statement of Claim to add a claim of Unfair Competition was granted.

Respondents' Motion for Directed Verdict was denied.

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 original(s) remain on file with NASD Regulation. Inc. Office of Dispute Resolution.

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 Respondents The Chicago Corporation and Jeffrey P. Novak are jointly and severally liable for and shall pay to Claimant J.W. Korth & Company compensatory damages in the amount of Seventy Seven Thousand Dollars and No Cents (\$77,000.00), plus interest on this sum in accordance with MCLA 600.6013 which shall begin to accrue from November 19, 1996 and shall continue to accrue until the date the award is paid in full;
- (2) That other than forum fees which are specified below, the parties shall each bear their own costs, attorney fees and expenses incurred in this matter; and
- (3) That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$1,500 per hearing session and \$300 for each pre-hearing conference, if any. There were ten (10) hearing sessions x \$1,500 = \$15,000 in forum fees.

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Pursuant to Rule 10205(b) of the NASD Code of Arbitration Procedure ("Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10205(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500 and shall refund the hearing session deposit in the amount of \$1,500 previously deposited by the Claimant. Pursuant to Rule 10205(c) of the Code, Respondents are liable for and shall pay forum fees in the amount of \$15,000. Pursuant to Rule 10319 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the postponement fee in the amount of \$1,500 previously deposited by Respondents.

Pursuant to Rule 10333 of the Code, Claimant shall pay to NASD Regulation, Inc. the \$500 past due member surcharge previously invoiced. Pursuant to Rule 10333 of the Code, Respondent Chicago Corp. shall pay to NASD Regulation, Inc. the \$500 past due member surcharge previously invoiced.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures:

\s\ Jeffry M. Bauer, Esq.

Jeffry M. Bauer, Esq.
Chairperson
Public Arbitrator

September 2, 1998

Dated:

\s\ Jerome D. Sobczak

Jerome D. Sobczak
Panelist
Public Arbitrator

September 3, 1998

Dated:

\s\ Ramona V. Larson

Ramona V. Larson
Panelist
Industry Arbitrator

September 2, 1998

Dated:

For NASD Regulation use only:

Date award served on parties: **September 3, 1998**