

AWARD
NASD Regulation, Inc.

In the Matter of Arbitration Between

Douglas Kahn,
Claimant,

and

No. 98-0195

Southwest Securities, Inc.

Respondents.

REPRESENTATION OF PARTIES

Claimant, Douglas Kahn, ("Claimant") was represented by Dean Carlton, Esquire of Fiedler, Adkin, Frank & Carlton P.C. located in Dallas.

Respondent, Southwest Securities, Inc. was represented by Corbet Bryant, Esquire of Carington Coleman Sloman & Blumenthal located in Dallas, Texas.

CASE INFORMATION

Claimant Douglas Kahn's Statement of Claim was filed on or about January 16, 1998. Claimant Douglas Kahn's Submission Agreement was signed on June 6, 1998.

Respondent Southwest Securities Incorporated's Statement of Answer, Affirmative Defenses and Counterclaim was filed on or about September 17, 1998. Respondent Southwest Securities Incorporated's Submission Agreement was signed on September 9, 1998 by Stuart Blaugrand, its attorney in fact.

HEARING INFORMATION

Telephonic pre-hearings with the full panel of arbitrators were held on November 10, 1998, December 17, 1998 and January 11, 1999 for one (1) session each for a total of three (3) full panel pre-hearing sessions.

The hearing was held on February 1, 1999 for two (2) sessions and February 2, 1999 for two (2) sessions for four (4) sessions in Dallas, Texas.

CASE SUMMARY

Claimant Douglas Kahn ("Claimant") alleged that he was hired by Respondent Southwest Securities, Inc. ("Respondent") as Senior Vice-President Manager of Institutional Sales in early September of 1995. On or about September 6, 1995 the parties set forth the details of Claimant's employment in a written agreement and on September 13, 1995 Claimant began his job.

Claimant asserts that on December 16, 1996 Respondent discharged him and forced him to vacate his office immediately without just cause and in violation of the terms of the employment agreement. Claimant further alleges that Respondent's actions were intentional and malicious. Claimant brought claims for breach of contract, wrongful discharge and defamation.

Respondent denied any wrongdoing as alleged in the Claimant's Statement of Claim. Respondent alleged that Claimant was an employee at will and that Respondent could terminate him at any time, with or without cause and without prior notice.

Respondent, in its Counterclaim, asserts that Claimant instituted a lawsuit in Texas Court in bad faith, forced Respondent to move the court to compel arbitration in pursuit of a frivolous claim. Respondent allege that as a result of Claimant's actions they have suffered injury to their business reputation and standing in the community. Respondent brought affirmative defenses including that Claimant was an at will employee and that he failed to state a Claim upon which relief could be granted.

RELIEF REQUESTED

Claimant Douglas Kahn requested an award for damages, exemplary damages, prejudgment and postjudgment interest, attorneys fees, court and arbitration costs, and such other relief to which he may show himself entitled.

Respondents requested that the claims asserted against them be dismissed, that they be awarded damages against Claimant, including actual and exemplary damages, attorney's fees and costs and for such other and further relief to which Respondent may be entitled.

OTHER ISSUES CONSIDERED AND DECIDED

On April 17, 1998 the District Court of Dallas County Texas entered an order compelling this matter to arbitration and ordered that Plaintiff Douglas Kahn's claims be arbitrated before the NASD.

Claimant brought a Motion for Sanctions for failure to mediate in good faith. The Motion was fully briefed by both parties and the panel heard argument on the motion. The panel hereby denies the Motion for Sanctions.

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 the 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 the Respondent Southwest Securities, Inc. is liable for and shall pay Claimant Douglas Kahn compensatory damages in the sum of \$55,000.00 (fifty five thousand dollars and no ones) and 7% (seven percent) interest thereon from date of service of the award until paid;
2. That the Respondent Southwest Securities, Inc. is liable for and shall pay Claimant Douglas Kahn attorney's fees in the sum of \$28,000.00 (twenty eight thousand dollars and no ones). In deciding to award attorney's fees the panel considered the documents and arguments of counsel and case law and statutory law submitted by counsel and finds that there is support for an award of attorneys fees;
3. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per full panel hearing session. There were seven (7) hearing sessions x \$750.00 = \$5,250.00 in forum fees. Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (the "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 10332(c) of the Code, Claimant, Douglas Kahn, has paid to the NASD Regulation, Inc., Office of Dispute Resolution, the non-refundable filing fee of \$500.00 and has also paid the hearing session deposit of \$750.00. Respondent, Southwest Securities, Inc. is liable for one-half ($\frac{1}{2}$) of the forum fees in this matter and shall pay the sum of \$2,025.00 (\$2,675.00 less the \$600.00 Counterclaim hearing session deposit previously deposit) to NASD Regulation, Inc., Office of Dispute Resolution. Claimant, Douglas Kahn, is liable for one half ($\frac{1}{2}$) the forum fees in this matter and shall pay the sum of \$1,875.00 (\$2,625.00 less the \$750.00 hearing session previously deposited) to NASD Regulation, Inc., Office of Dispute Resolution.

OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent, Southwest Securities, Inc., has paid the NASD Regulation, Inc., Office of Dispute Resolution, the \$1,500.00 member surcharge previously invoiced.

Pursuant to Rule 1033 of the Code, Respondent, Southwest Securities, Inc., has paid to the NASD Regulation, Inc., Office of Dispute Resolution, the \$600.00 pre-hearing process fees previously invoiced and shall pay the \$2,500.00 hearing process fee.

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

Concurring Arbitrators' Signatures:

/s/ Jack Rains

March 29, 1999

Jack W. Raines
Chairperson
Public Arbitrator

Date

/s/ Richard A. Knudsen

March 29, 1999

Richard A. Knudsen
Panelist
Public Arbitrator

Date

/s/ Charles T. Dix

March 29, 1999

Charles T. Dix
Panelist
Industry Arbitrator

Date