

**AWARD**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Darrell Dobernecker

and

99-00348

Des Moines, Iowa

Name of Respondent

U.S. Bancorp Investments, Inc.

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**REPRESENTATION OF PARTIES**

Darrell Dobernecker ("**Claimant**") was represented by R. Jeffrey Lewis, Esq., Lewis, Webster, Johnson, Van Winkle & De Volder, L.L.P., Des Moines, Iowa.

U.S. Bancorp Investments, Inc. ("**Respondent**") was represented by Dennis W. Johnson, Esq., Dorsey & Whitney, LLP., Des Moines, Iowa.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 26, 1999. Submission Agreement of Claimant Darrell Dobernecker was signed on January 14, 1999.

Statement of Answer was filed by Respondent U.S. Bancorp Investments, Inc. on or about March 31, 1999. Submission Agreement of Respondent U.S. Bancorp Investments, Inc. was signed on March 22, 1999 by Mary C. Kastens.

**CASE SUMMARY**

Claimant alleged that Respondent interfered with the contractual relationships with his investment clients; that Respondent breached the agreement that customers who were serviced by him at U.S. Bancorp were his and that he would continue to service those customers after his termination; that Respondent misappropriated trade secrets; that Respondents engaged in unfair competition; that Respondent engaged in false personation; and that Respondent forged his signature to documents transmitted to customers.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that Claimant's name inadvertently appeared on certain documents generated after his

termination. It was stated that the appearance of Claimant's name on these computer generated documents occurred because Respondent was in the a major transition. Respondent was in the process of acquiring Piper Jaffray which involved the restructuring of personnel and relocation of 25 offices in Iowa. Respondent also specifically denied that there was some sort of agreement that it would not attempt to solicit clients of Claimant if he left the company. Respondent stated, to the contrary, there was never any agreement on anyone's part about a covenant not to compete.

In its Counterclaim, Respondent alleged that Claimant took at least 79 confidential customer files with him upon his termination. Respondent stated that the actions of Claimant constituted misappropriation of trade secrets, breach of contract, and interference with contract.

### **RELIEF REQUESTED**

Claimant requested an award for the full amount of compensatory damages he has and will sustain as well as punitive damages in the minimal amount of \$100,000.01 to \$500,000.00; plus interest at the maximum allowable rates; and costs, including reasonable attorneys' fees.

Respondent requested that the claimant's claims for relief should be denied; that it should recover costs incurred in defending this matter; that it should recover its attorneys' fees incurred in defending this matter; and should be awarded unspecified compensatory and punitive damages, attorneys' fees and costs on its Counterclaim.

### **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 original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution (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. The Arbitration panel finds in favor of the Claimant Darrell Dobernecker on all claims asserted but awards no damages.
2. The Arbitration Panel also finds in favor of Darrell Dobernecker on the Counterclaim filed by Respondent.

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.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$500.00
Counter claim/Cross claim/Third Party Claim filing fee	= \$500.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is(are) {a party / the Respondent's firm(s) / the Respondent's former firm(s)}.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

#### **Forum Fees and Assessments**

The Arbitrator(Panel) assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conference(s): August 16, 1999	1 session
Four (4) Hearing sessions x \$750.00	= \$3,000.00
Hearing Date(s): January 13, 2000	3 sessions
<u>January 14, 2000</u>	<u>1 session</u>
Total Forum Fees	= \$3,750.00

The Arbitration Panel has assessed \$750.00 of the forum fees to Claimant Darrell Dobernecker.

The Arbitration Panel has assessed \$3,000.00 of the forum fees to Respondent U.S. Bancorp Investments, Inc.

**Fee Summary**

Claimant, Darrell Dobernecker, shall be and hereby is liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$ 750.00
Total Fees	= \$1,250.00
<u>Less payments</u>	= \$1,250.00
Balance Due NASD Regulation, Inc.	= \$ 0.00

Respondent, U.S. Bancorp Investments, Inc., shall be and hereby is liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$4,600.00
<u>Forum Fees</u>	= \$3,000.00
Total Fees	= \$8,100.00
<u>Less payments</u>	= \$5,850.00
Balance Due NASD Regulation, Inc.	= \$2,250.00

**All balances are due to NASD Regulation, Inc.**

Dated:

/s/ Thomas J. Gmeinder  
Thomas J. Gmeinder, Esq.  
Public Arbitrator, Presiding Chair

January 24, 2000

/s/ Kennes C. Huntley  
Kennes C. Huntley, Ph.D  
Public Arbitrator

January 25, 2000

/s/ Roy J. Burr, Jr.  
Roy J. Burr, Jr.  
Industry Arbitrator

January 30, 2000

The Arbitration Panel has assessed \$750.00 of the forum fees to Claimant Darrell Dobernecker.

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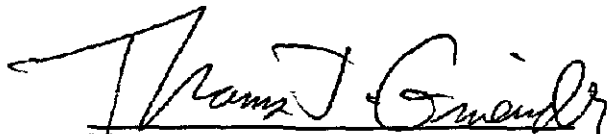
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Thomas J. Gmeinder, Esq.  
Public Arbitrator, Presiding Chair

Dated:

01-24-00

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Kennes C. Huntley, Ph.D  
Public Arbitrator

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Roy J. Burr, Jr.  
Industry Arbitrator

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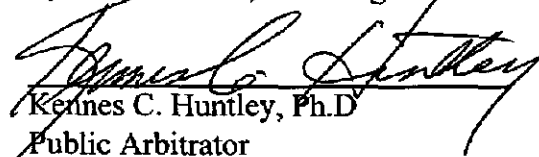
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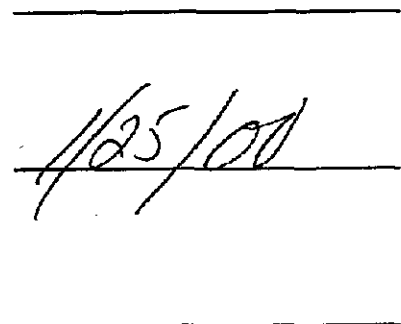
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Public Arbitrator, Presiding Chair

  
Kennes C. Huntley, Ph.D.  
Public Arbitrator

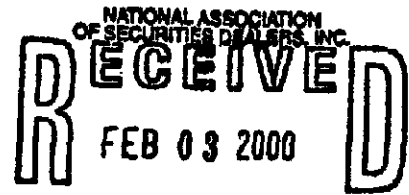
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Roy J. Burr, Jr.  
Industry Arbitrator

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1/25/00

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Industry Arbitrator

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1/30/00