

**Award**  
**NASD Regulation, Inc.**

In the Matter of the Arbitration Between

Name of Claimant

William C. Gilbert

Case No. 99-01188

Name of Respondent

BB & T t/a Craigie Inc. (n/k/a Scott & Stringfellow, Inc.)

**REPRESENTATION OF PARTIES**

Claimant, William C. Gilbert, hereinafter referred to as "Claimant" was represented by James B. Thorsen, Esq., of the law firm of Thorsen, Marchant & Scher, LLP, Richmond, Virginia.

Respondent, BB&T t/a Craigie, Inc. (n/k/a Scott & Stringfellow, Inc.), hereinafter referred to as "Respondent" was represented by John S. Barr, Esq., of the law firm of McGuire, Woods, Battle & Boothe LLP, Richmond, Virginia.

**CASE INFORMATION**

Statement of Claim filed on: March 12, 1999.

Amended Statement of Claim filed on: March 29, 1999.

Claimant signed the Uniform Submission Agreement on: March 10, 1999.

Statement of Answer filed by Respondent on: July 20, 1999.

Merlin T. Grim, Treasurer of Scott & Stringfellow, Inc., executed the Uniform Submission Agreement on behalf of Respondent on: July 20, 1999.

**CASE SUMMARY**

Claimant asserted the following causes of action: wrongful discharge, breach of contract, and defamation. Claimant alleged that Respondent made a written job offer on February 4, 1998, offering Claimant a position with an annual salary of \$78,000, three weeks of vacation, and a guaranteed bonus of \$11,700. Based on that offer, Claimant resigned from his position at Crestar Bank and accepted the offer. Claimant began work for Respondent on February 25, 1998. Claimant alleged that his employment was for a one year term, and that he could be terminated only for cause. Claimant was terminated on September 21, 1998, and alleged that the termination was without cause. Following the termination, Respondent filed with the NASD a form U-5 which contained untrue and defamatory information regarding the reason for Claimant's termination. Because of that allegedly defamatory U-5, Claimant was unable to find other employment until August 27, 1999.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and maintained that Claimant failed to state a cause of action upon which relief could be granted. Respondent maintained that some of their statements concerning the reasons for Claimant's discharge are protected by an absolute and/or qualified privilege. Respondent maintained that statements made by them concerning the reasons for Claimant's discharge are truthful. Respondent maintained that to the extent that Claimant suffered any damages or injury, which is denied, Claimant failed to mitigate his damages.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages:

\$100,000

Other Monetary/Non-Monetary Relief if any:

Claimant requested that Respondent file an amended U-5.

Respondent requested that Claimant's claim be dismissed and that Claimant bear all costs and fees associated with this claim.

### **OTHER ISSUES CONSIDERED AND 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.

### **FINDINGS OF THE PANEL**

After considering the pleadings, testimony and evidence presented at the hearing, the panel made the following findings of fact:

1. The form U-5 filed by Respondent with the NASD indicating the reasons for Claimant's termination was not defamatory.
2. Claimant was an employee at will of Respondent, Craigie, Inc. He was not employed for a fixed term; therefore, under Virginia law, Respondent had the right to discharge him at any time, for any reason or for no reason, as long as the discharge was not for a prohibited reason. In this case we found no such prohibited reason to exist.
3. Although Respondent had the right to discharge Claimant, it could still be in breach of the terms of Claimant's employment, and the panel finds that they did breach their contract of employment.
4. Claimant was promised three weeks of vacation; he was given only one. He is owed two weeks of vacation pay at \$1,500.00 per week.
5. Claimant accepted employment with Respondent pursuant to the terms of a letter written by F. Louis Loyd, III, on February 4, 1999. The portion of that letter referring to a "year end bonus" in the amount of \$11,700.00 is somewhat ambiguous. Claimant says it means one thing; Respondent another. Since the letter was drafted by Respondent, it will be interpreted and construed most strictly against them.
6. The panel finds that the \$11,700 bonus offer was worded in such a way that it could have been interpreted by Claimant to be an absolute and unconditional bonus offer. The panel further finds that the bonus offer was a material factor in inducing Claimant to leave his employment with Crestar Bank and accepting employment with Craigie, Inc.

### **AWARD**

Accordingly, the panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The claim for defamation is denied in its entirety.
2. The claim for wrongful discharge is denied in its entirety.
3. Respondent is liable to Claimant and shall pay to Claimant the sum of \$14,700; plus 8% compound interest monthly from September 21, 1998 until the date the award is paid.
4. All relief not specifically addressed herein is denied in its entirety.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure, 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

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings. In this matter, the member firm is the Respondent.

Member surcharge = \$1,000

Pre-hearing process fee = \$ 600

Hearing process fee = \$1,500

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

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

1 Pre-hearing conference with Panel x \$600 = \$ 600

Pre-hearing conference: January 17, 2000

2 Hearing sessions x \$600 = \$1,200

Hearing Date: May 1, 2000

Total Forum Fees = \$1,800

The Panel has assessed all of the forum fees to Respondent.

### **Fee Summary**

Claimant, be and hereby is solely liable for:

Initial Filing Fee = \$ 500

Less Payments = \$1,250

Refund to Claimant = \$ 750

Respondent, be and hereby is solely liable for:

Member Fees = \$3,100

Forum Fees = \$1,800

Total Fees = \$4,900

Less Payments = \$4,900

Balance Due NASD Regulation, Inc.        = \$ 0

BB&T submitted fees that partially paid for the fees that were ultimately assessed to Scott & Stringfellow, Inc.  
BB&T will receive a refund in the amount of \$1300.00.

All balances are due and payable to NASD Regulation, Inc.

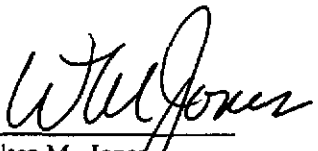
Concurring Arbitrators' Signatures

\_\_\_\_\_  
Nelson I. Fishman  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Ezio E. Borchini  
Public Arbitrator, Panelist

\_\_\_\_\_  
Date Signed

  
\_\_\_\_\_  
Walter M. Jones  
Non-Public Arbitrator, Panelist


  
\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Award Served By NASD Regulation, Inc.

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Nelson I. Fishman  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Date Signed

  
\_\_\_\_\_  
Ezio E. Borchini  
Public Arbitrator, Panelist

6/9/00  
\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Walter M. Jones  
Non-Public Arbitrator, Panelist

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Award Served By NASD Regulation, Inc.

Concurring Arbitrators' Signatures



Nelson I. Fishman  
Public Arbitrator, Presiding Chair

June 7, 2000

Date Signed

\_\_\_\_\_  
Ezio E. Borchini  
Public Arbitrator, Panelist

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Walter M. Jones  
Non-Public Arbitrator, Panelist

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Award Served By NASD Regulation, Inc.