

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

First National Bank & Trust of Muskogee, (Claimant) vs. FFP Securities, Inc., Jack Crow, and Rebecca Tidmore, (Respondents) vs. BOSC, Inc. (Third-Party Respondent).

Case Number: 99-03018

Hearing Site: Oklahoma City, Oklahoma

(Consolidated with FFP Securities, Inc., Jack Crow and Rebecca Tidmore vs. First National Bank & Trust of Muskogee; Case Number 99-03161)

REPRESENTATION OF PARTIES

Claimant, First National Bank & Trust of Muskogee ("FNB"), hereinafter referred to as "Claimant" and Third-Party Respondent, BOSC, Inc., hereafter referred to as "Third-Party Respondent": Paul DeMuro, Esq. and John S. Clayman, Esq., Frederick Dorwart, Tulsa, Oklahoma.

Respondent, FFP Securities, Inc. ("FFP"), hereafter referred to as "Respondent": L. Steven Goldblatt, Esq., Kodner, Watkins, Muchnick & Dunne, St. Louis, Missouri.

Respondents, Jack Crow ("Crow") and Rebecca Tidmore ("Tidmore"), hereinafter collectively referred to as "Respondents": Reuben Davis, Esq., Boone, Smith, Davis, Hurst & Dickman, Tulsa, Oklahoma.

CASE INFORMATION

In Case Number 99-03018:

Statement of Claim filed by FNB on or about: July 2, 1999

Statement of Answer and Counter-Claim filed by Respondent, FFP, Jack Crow and Rebecca Tidmore on or about: July 8, 1999

Statement of Answer, Counter-Claim and Third-Party Claim titled Second Supplement to

Statement of Claim filed by FFP, Jack Crow and Rebecca Tidmore on or about: August 11, 1999

Submission Agreement signed by Respondent, Jack Crow, on: July 5, 1999

Submission Agreement signed by Respondent, Rebecca Tidmore, on: July 6, 1999

In Case Number 99-03161:

Statement of Claim filed by FFP, Jack Crow and Rebecca Tidmore, on or about: July 9, 1999

Submission Agreements signed by Jack Crow and Rebecca Tidmore, on: July 9, 1999

CASE SUMMARY

FNB submitted the following case summary:

In its Statement of Claim, First National Bank alleged that FFP, Crow and Tidmore conspired to tortiously breach the terms of a certain written agreement by and between First National and FFP to provide securities brokerage services onsite at First National Bank. First National Bank made allegations for breaches of (i) contract, (ii) the implied covenant of good faith and fair dealing and (iii) fiduciary duty, as well as conspiracy, tortious interference with business interests, conversion, unfair competition and misappropriation of trade secrets.

Respondents FFP, Crow and Tidmore denied the allegations set forth in First National Bank's Statement of Claim. Respondents asserted affirmative defenses that First National Bank's claims were barred by waiver, estoppel, laches, unclean hands, illegality, privilege, consent, failure of consideration and failure to mitigate or avoid damages. Respondents also asserted counterclaims against First National Bank and joined as a third party respondent, BOSC, Inc. Respondents alleged that First National Bank and BOSC interfered with contractual relations, violated the Lanham Act, committed (i) disparagement, (ii) defamation, (iii) trespass, and (iv) fraud and obtained a wrongful temporary order through abuse of process and malicious prosecution.

First National Bank and BOSC denied the allegations asserted by Respondents FFP, Crow and Tidmore in their Counterclaims.

FFP, Mr. Crow and Ms. Tidmore submitted the following case summary:

In its Statement of Claim, First National Bank alleged that FFP, Crow and Tidmore conspired to breach the terms of a certain written agreement by and between First National and FFP to provide securities brokerage services at First National Bank. First National Bank made claims for (i) temporary restraining order, preliminary injunction, permanent injunction, as well as for breaches of (ii) contract, (iii) the implied covenant of good faith and fair dealing and (iv) fiduciary duty, along with claims for conspiracy, tortious interference with business interests, conversion, unfair competition and misappropriation of trade secrets. First National Bank requested an award against FFP, Crow and Tidmore, jointly and severally, of a sum of not less than \$218,007.17 in actual damages; a sum of not less than \$656,028.51 in punitive or exemplary damages; and, a sum of not less than \$191,140.42 in attorney fees and costs incurred through October 15, 1999.

Respondents FFP, Crow and Tidmore denied the allegations set forth in First National Bank's Statement of Claim. Respondents asserted affirmative defenses that First National Bank's claims were barred by waiver, estoppel, laches, unclean hands, illegality, privilege, consent, failure of consideration and failure to mitigate or avoid damages.

Counter-Claimants FFP, Crow and Tidmore asserted claims and counterclaims against First National Bank and BOSC, Inc.. Specifically, FFP, Crow, and Tidmore claim that the brokerage records were the property of FFP; that First National Bank and Trust Company of Muskogee ("FNB") breached the Brokerage Agreement; that following the breach of the Brokerage agreement, FNB/BOSC obtained a wrongful TRO, tortiously interfered with FFP's, Crow's, and Tidmore's brokerage customers, defamed FFP, Crow, and Tidmore, misappropriated and converted FFP's confidential brokerage records, and disparaged FFP, Crow, and Tidmore in a false light in violation of the Lanham Act. FFP, Crow, and Tidmore are seeking damages of \$867,365 for pecuniary loss, \$1 million in damages for injury to reputation, emotional distress and embarrassment, attorneys fees and expenses according to proof in excess of \$300,000, and an additional \$2 million as punitive damages.

Counter-Respondents First National Bank and BOSC denied the allegations asserted by Counter-Claimants FFP, Crow and Tidmore in their Counterclaims Counter-Respondents.

Counter-Respondents First National Bank and BOSC requested that the claims asserted against them by FFP, Crow and Tidmore be denied in their entirety.

Counterclaimants FFP, Crow, and Tidmore have further requested in pleading, in a written Motion For Sanctions under NASD Rule 10106, and during closing arguments to the Panel that BOSC be referred to the District Business Conduct Committee, for the continued prosecution of the state court action during the pendency of the instant arbitration proceeding.

RELIEF REQUESTED

Claimant, FNB, requested:

Compensatory Damages	\$10,000
Injunction	
Punitive Damages	
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	

Respondent, FFP, Mr. Crow and Ms. Tidmore, requested:

Compensatory Damages	unspecified
Injunction	
Declaratory Relief	

OTHER ISSUES CONSIDERED AND DECIDED

Respondent, FFP Securities, Inc., and Third-Party Respondent, BOSC, Inc., did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and/or testified at the hearing, are bound by the determination of the Arbitrators on all issues submitted.

On or about July 16, 1999, the Panel ordered the consolidation of Case Numbers 99-03018 and 99-03161. The Panel also ordered that it was unwilling to continue any injunctive relief that had been previously granted without an evidentiary hearing on the merits as provided under Rule 10335 of the Code of Arbitration Procedure.

On or about August 20, 1999, the Panel denied FFP, Mr. Crow and Ms. Tidmore's Application for Interim Injunctive Relief. The Panel stated that any request by the parties for permanent injunctive relief would be heard by the Panel at the merits hearing.

On or about August 31, 1999, the Panel granted FFP, Mr. Crow and Ms. Tidmore's Motion to File a Second Supplemental Claim which was a Counter-Claim and a Third-Party Claim adding BOSC, Inc. as a Third-Party Respondent..

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel sustains FNB's claim that FFP did breach the agreement by removing its own records in contravention of para. XI, supra. B of the agreement between FNB and FFP;
2. The Panel sustains FNB's claim that FFP did breach its implied duty of good faith and fair dealing. As to decisions #1 and #2, the Panel awards the Claimant, FNB, \$20,000. Therefore, FFP Securities, Inc. is liable for and shall pay to First National Bank & Trust of Muskogee \$20,000 in compensatory damages;
3. The Panel denies FNB's claim that, as dual employees of FFP and FNB, Crow and Tidmore breached their duty of loyalty to FNB;
4. The Panel denies FNB's claim that FFP, Crow and Tidmore are liable for civil

- conspiracy;
5. The Panel denies FFP's claim for breach of the contract by FNB;
 6. The Panel sustains FFP's claim that FNB misused information received from FFP by using it to solicit brokerage clients and/or to allow BOSC to do so. As to decision #6, the Panel awards Respondent, FFP, \$10,000. Therefore, First National Bank & Trust of Muskogee is liable for and shall pay to FFP Securities, Inc. \$10,000 in compensatory damages;
 7. The Panel sustains FFP's claim that FNB did interfere with FFP's, Crow's and Tidmore's contract and business relations. As to decision # 7, the Panel awards the Respondent, FFP, \$10,000. Therefore, First National Bank & Trust of Muskogee is liable for and shall pay to FFP Securities, Inc. \$10,000 in compensatory damages;
 8. The Panel denies FFP's claim that either FNB or BOSC violated the Lanham Act or did either commercially disparage FFP, Crow or Tidmore;
 9. The Panel sustains the Respondents' claim that, by stating in various press releases that the brokerage firm records were the records of FNB, FNB defamed FFP, Crow and Tidmore. As to Decision #9, the Panel awards the following: FFP - \$0 damages; Crow - \$10,000 and Tidmore - \$20,000. Therefore, First National Bank & Trust of Muskogee is liable for and shall pay to Jack Crow \$10,000 in compensatory damages and is liable for and shall pay to Rebecca Tidmore \$20,000 in compensatory damages.
 10. The Panel sustains Respondents' claim that FNB, by failing to properly supervise its employees, committed a trespass as to the personal property of Respondents, and awards no damages;
 11. The Panel sustains that part of Respondents' claim that FNB wrongfully obtained a Temporary Restraining Order in the state courts, which the Panel holds was an abuse of the process. As to Decision #11, the Panel awards \$90,267 to Respondents. Therefore, First National Bank & Trust of Muskogee is liable for and shall pay to FFP Securities, Inc., Jack Crow and Rebecca Tidmore \$90,267 in compensatory damages;
 12. All parties have dismissed their prior claims for injunctive relief and the Panel agrees that no injunctive relief should be granted against any party to these proceedings;
 13. The motion of Respondents for sanctions is denied; and
 14. With the exception of fees addressed below, all claims and relief not specifically awarded herein are hereby denied in their entirety.

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 for Case Number 99-03018 = \$75

Initial claim filing fee for Case Number 99-03161	= \$500
Counter claim filing fee for Case Number 99-03018	= \$500

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 is FFP Securities, Inc.

Member surcharge for Case Number 99-03018	= \$300
Member surcharge for Case Number 99-03161	= \$1200
Pre-Hearing process fee	= \$600
Hearing process fee	= \$2,000

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(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) Injunctive hearing with one arbitrator x \$450	= \$450
Injunctive hearing: July 14, 1999	1 session
Four (4) Pre-hearing sessions with Panel x \$1,000	= \$4,000
Pre-hearing conferences: July 16, 1999	1 session
July 21, 1999	1 session
August 31, 1999	1 session
September 27, 1999	1 session
Ten (10) Hearing sessions x \$1,000	= \$10,000
Hearing Dates: October 11, 1999	2 sessions
October 12, 1999	2 sessions
October 13, 1999	2 sessions
October 14, 1999	2 sessions
October 15, 1999	2 sessions
Total Forum Fees	= \$14,450

1. The Panel has assessed \$7,225 of the forum fees to Claimant, First National Bank & Trust of Muskegoe.
2. The Panel has assessed \$7,225 of the forum fees jointly and severally to Respondents, FFP Securities, Inc., Jack Crow and Rebecca Tidmore.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. FFP, \$10

Fee Summary

1. Claimant, First National Bank & Trust of Muskogee, be and hereby is solely liable for:

Initial Filing Fee	= \$75
Member Fees	= \$0
Adjournment Fee	= \$0
Forum Fees	= \$7,225
<u>Administrative Costs</u>	<u>= \$0</u>
Total Fees	= \$7,300
<u>Less payments</u>	<u>= \$2,500</u>
Balance Due NASD Regulation, Inc.	= \$4,800

2. Respondent, FFP Securities, Inc., be and hereby is solely liable for:


Counter-claim Filing Fee	= \$500
Member Fees	= \$4,100
Adjournment Fee	= \$0
<u>Administrative Costs</u>	<u>= \$10</u>
Total Fees	= \$4,610
<u>Less payments</u>	<u>= \$7,010</u>
Amount carries to #4 below	= \$2,400

4. Respondents, FFP Securities, Inc., Jack Crow and Rebecca Tidmore, be and hereby are jointly and severally liable for:

Claim Filing Fee	= \$500
<u>Forum Fees</u>	<u>= \$7,225</u>
Total Fees	= \$7,725
<u>Less payments</u>	<u>= \$2,400</u>
Balance Due NASD Regulation, Inc.	= \$5,325

All balances are due to NASD Regulation, Inc. and are payable within 30 days of the service date of this Award.

Concurring Arbitrators' Signatures



Robert D. Garrett, Esq.
Public Arbitrator, Presiding Chair

11/18/99
Signature Date

Dennis S. Boxeur, Esq.
Public Arbitrator

Signature Date

William Richard Smith
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

All balances are due to NASD Regulation, Inc. and are payable within 30 days of the service date of this Award.

Concurring Arbitrators' Signatures

Robert D. Garrett, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Dennis S. Boxeur
Dennis S. Boxeur, Esq.
Public Arbitrator

Nov. 19, 1999
Signature Date

William Richard Smith
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Concurring Arbitrators' Signatures

Robert D. Garrett, Esq.
Public Arbitrator, Presiding Chair

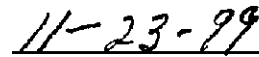
Signature Date

Dennis S. Boxeur, Esq.
Public Arbitrator

Signature Date



William Richard Smith
Industry Arbitrator



Signature Date

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