

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Nathaniel Barnhart

and

99-04503
Minneapolis, Minnesota

Name of Respondent

Citicorp Investment Services, Inc.

REPRESENTATION OF PARTIES

Nathaniel Barnhart ("**Claimant**") was represented by Scott N. Heidepriem, Esq., Johnson, Heidepriem, Miner, Marlow & Janklow, L.L.P., Sioux Falls, South Dakota.

Citicorp Investment Services, Inc. ("**Respondent**") was represented by Robert A. Kaiser, Esq., Armstrong Teasdale LLP, St. Louis, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about October 4, 1999. Claimant's Response to Motion to Dismiss was filed on or about April 14, 2000. Submission Agreement of Claimant Nathaniel Barnhart was signed on September 22, 1999.

Statement of Answer was filed by Respondent Citicorp Investment Services, Inc. on or about December 14, 1999. Motion to Dismiss Claimant's Statement of Claim was filed on or about March 30, 2000. Respondent's Reply to Claimant's Response to Motion to Dismiss Claimant's Statement of Claim was filed on or about April 19, 2000. Submission Agreement of Respondent Citicorp Investment Services, Inc. was undated.

CASE SUMMARY

The following summary was submitted:

Claimant alleged that Citicorp Investment Services, Inc. published false and defamatory statements about him in a Form U-5. Claimant later alleged that Respondent terminated his employment after he reported violations of state or federal laws to Respondent, and that as a "whistleblower" his discharge violated the public policy of South Dakota.

Respondent denied the allegations set forth in the Statement of Claim. With regard to the claim of defamation, Respondent stated that the U-5 publications to third parties regarding Claimant are true and privileged. Respondent specifically stated that Claimant was terminated for violating Company policy and procedure by attempting to gain unauthorized access to a computer database, as evidenced by a legally obtained tape-recording of the incident. On April 24, 2000 following a telephone hearing on Respondent's Motion to Dismiss, the panel unanimously dismissed Claimant's defamation claim with prejudice. With regard to the allegation of whistleblower wrongful discharge, Respondent stated that no such cause of action exists under South Dakota law. Moreover, Respondent was unaware of Claimant making any report concerning violations of law. Finally, Respondent contends that no such reports played any role in his discharge, but that his discharge was motivated by Claimant's attempted unauthorized access to a computer data base. Claimant's wrongful discharge claim is now the sole claim to be decided.

RELIEF REQUESTED

Claimant requested an award of compensatory in the amount of \$300,000 and punitive damages in the amount of \$200,000 with applicable statutory interest; costs, expenses, and reasonable attorneys' fees; pre-judgment and post-judgment interest; and any other relief deemed just and proper.

Respondent requested that judgment be entered against Claimant; Claimant be denied any and all damages sought; Respondent be awarded attorneys' fees and costs, including hearing session and forum fees, in defending the matter and any other further relief deemed just and appropriate.

OTHER ISSUES CONSIDERED & DECIDED

The parties were advised of the Arbitration Panel's decision on the Motion to Dismiss by letter dated May 2, 2000, which stated in pertinent part:

The Panel heard and questioned the parties' representatives and discussed the issues among themselves, all between 3:00 and 5:00 p.m. on April 24, 2000, and unanimously decided and ruled as follows:

1. Claimant's claim for defamation is dismissed, with prejudice.
2. Claimant may pursue in this arbitration his claim for wrongful termination or discharge (but not for breach of contract in that regard), and may conduct discovery under NASD rules for the purpose of attempting to support that claim.
3. Claimant may pursue in this arbitration his petition for modification or expungement of the U-5 report at issue in this case and any ancillary relief afforded by NASD rules and procedures, and Claimant may conduct appropriate related discovery under NASD rules.

4. Counsel are encouraged to prepare trial briefs on South Dakota law regarding a "whistleblower" or other legal basis for establishing a cause of action under paragraph 2, above.
5. References to discovery by Claimant are not intended to reduce Respondent's discovery rights, including discovery to ascertain the alleged factual basis for a claim under paragraph 2, above.

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 Dispute Resolution, Inc. (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. Respondent Citicorp Investment Services, Inc. shall be and hereby is liable for and shall pay to Claimant Nathaniel Barnhart the sum of \$8,000 as compensatory damages.
2. Respondent Citicorp Investment Services, Inc. shall be and hereby is liable for and shall pay to Claimant Nathaniel Barnhart the sum of \$1,500 as interest.
3. In addition, the Panel directs the expungement of the reason for termination from Nathaniel Barnhart's CRD record. The panel directs this expungement from Nathaniel Barnhart's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Nathaniel Barnhart's must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

The expungement relief is granted based on the defamatory nature of the information contained on the Form U-5, however, there has been no finding that the elements required to satisfy a claim for defamation have been met.

4. 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.
5. 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 Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$300.00

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 is Citicorp Investment Services, Inc.

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

Adjournment Fees

Adjournments requested during these proceedings:

June 6 and 7, 2000, adjournment by the parties
Nathaniel Barnhart's share = \$ 562.50
Citicorp Investment Services, Inc.'s share = \$ 562.50

Forum Fees and Assessments

The Arbitration 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:

Two (2) Pre-hearing session(s) with Panel x \$1,125.00 = \$2,250.00
Pre-hearing conference(s): March 13, 2000 1 session
April 24, 2000 1 session

Four (4) Hearing sessions x \$1,125.00 = \$4,500.00
Hearing Date(s): December 11, 2000 2 sessions
December 12, 2000 2 sessions

Total Forum Fees = \$6,750.00

- The Arbitration Panel has assessed \$6,750.00 of the forum fees jointly and severally to Citicorp Investment Services, Inc.

Fee Summary

Claimant, Nathaniel Barnhart, shall be and hereby is liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$ 862.50
<u>Less payments</u>	= \$1,425.00
Balance to be refunded by NASD Dispute Resolution, Inc.	= \$ 562.50

Respondent, Citicorp Investment Services, Inc., shall be and hereby is liable for:

Member Fees	= \$ 4,600.00
Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	= \$ 6,750.00
Total Fees	= \$11,912.50
<u>Less payments</u>	= \$ 4,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 7,312.50

All balances are due to NASD Dispute Resolution, Inc.

Dated:

/s/ David R. Bergerson
David R. Bergerson, Esq.
Public Arbitrator, Presiding Chair

December 15, 2000

/s/ Robert A. Oberle
Robert A. Oberle
Public Arbitrator

December 15, 2000

/s/ James B. Lynch
James B. Lynch, Esq.
Industry Arbitrator

December 18, 2000

NASD Dispute Resolution, Inc.
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David R. Bergerson, Esq.
Public Arbitrator, Presiding Chair

Dated:

12/15/00

Robert A. Oborlo
Public Arbitrator

James B. Lynch, Esq.
Industry Arbitrator

NASD Dispute Resolution, Inc.

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Public Arbitrator, Presiding Chair

Robert A. Oberle
Public Arbitrator

James B. Lynch, Esq.
Industry Arbitrator

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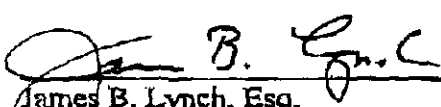
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Robert A. Oberle
Public Arbitrator


James B. Lynch, Esq.
Industry Arbitrator

12.18.2000