

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Cantor Fitzgerald & Co., (Claimant) vs. Tradition (North America) Inc. and Laine Karpus,
(Respondents)

Case Number: 99-05215

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Cantor Fitzgerald & Co., hereinafter referred to as "Claimant": Chaya F. Weinberg-Brodth, Esq., Kronish Lieb Weiner & Hellman LLP, New York, NY.

Respondents, Tradition (North America) Inc. ("Tradition") and Laine Karpus ("Karpus"), hereinafter collectively referred to as "Respondents": Carlyle M. Dunaway, Jr., Esq., Clifton Budd & DeMaria, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: November 18, 1999.

Claimant signed the Uniform Submission Agreement: November 16, 1999.

Statement of Answer filed by Tradition on or about: January 19, 2000.

Tradition signed the Uniform Submission Agreement: January 19, 2000.

Statement of Answer filed by Karpus on or about: January 19, 2000.

Karpus signed the Uniform Submission Agreement: January 19, 2000.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; breach of promissory note; and intentional and tortious interference with agreement.

Unless specifically admitted in its Answer, Tradition denied the allegations made in the Statement of Claim and asserted the following defenses: Tradition is not a member of the NASD and is not required to submit to arbitration before the NASD; the NASD lacks subject matter jurisdiction over Tradition; Tradition was not served with the Statement of Claim; the NASD lacks personal jurisdiction over Tradition; the Statement of Claim fails to state a cognizable claim upon which relief may be granted; Karpus's assent to the agreement in question was procured by means of duress; the terms of the agreement are so one-sided in favor of Claimant, which drafted it, that it should not and cannot be enforced; Claimant is

estopped from any relief by its own conduct; Claimant has breached its covenant of good faith and fair dealing with Karpus; as Claimant breached the Karpus agreement and its covenant of good faith and fair dealing, Karpus was not bound to continue to comply with the agreement; Claimant is not entitled to the return of its signing bonus; Karpus's assent to the promissory note was procured by means of duress; some or all of Claimant's claims are barred by the statute of limitations; some or all of Claimant's claims are barred by laches; by virtue of its acts and omissions, Claimant in whole or in part caused or exacerbated the damage to its business and has failed to mitigate its damages; the Panel is without authority to award the punitive damages sought by Claimant; punitive damages would be inappropriate on the facts of this case; Claimant, by virtue of its conduct with respect to Karpus, and otherwise, is estopped from obtaining any of the relief sought here; and Claimant is not entitled to any of the relief it seeks in its Statement of Claim.

Unless specifically admitted in her Answer, Karpus denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a cognizable claim upon which relief may be granted; Karpus's assent to the agreement in question was procured by means of duress; the terms of the agreement are so one-sided in favor of Claimant, which drafted it, that it should not and cannot be enforced; Claimant is estopped from any relief by its own conduct; Claimant has breached its covenant of good faith and fair dealing with Karpus; As Claimant breached the Karpus agreement and its covenant of good faith and fair dealing, Karpus was not bound to continue to comply with the agreement; Claimant is not entitled to the return of its signing bonus; Karpus's assent to the promissory note was procured by means of duress; some or all of Claimant's claims are barred by the statute of limitations; some or all of Claimant's claims are barred by laches; by virtue of its acts and omissions, Claimant in whole or in part caused or exacerbated the damage to its business and has failed to mitigate its damages; the Panel is without authority to award the punitive damages sought by Claimant; punitive damages would be inappropriate on the facts of this case; Claimant, by virtue of its conduct with respect to Karpus, and otherwise, is estopped from obtaining any of the relief sought here; and Claimant is not entitled to any of the relief it seeks in its Statement of Claim.

RELIEF REQUESTED

Claimant requested:

- a. An Award of liquidated damages against Karpus in the amount of \$182,874.83 for Karpus' breach of agreement, or alternatively actual damages caused to Claimant by reason of Karpus' breach of agreement;
- b. An Award of \$50,000.00, plus interest at the contractual rate of 5.65% per annum, for Karpus' default on her obligations under the promissory note;

- c. An Award of damages against Tradition, in an amount to be determined during the Arbitration, for Tradition's intentional and tortious interference with the Karpus agreement;
- d. An Award of interest, costs, and attorneys' fees against all Respondents; and
- e. Such other and further relief as to the Panel appears just and proper.

In their respective Answers, Respondents requested that the Panel dismiss the Statement of Claim in its entirety and grant Respondents their costs, attorneys' fees, and any other relief which the Panel deems proper.

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.

AWARD

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

- 1. Respondents be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$91,437.41 as compensatory damages, plus interest at the rate of 9% per annum accruing from December 1, 1997 until date of payment, for breach of section 10 of Karpus' employment agreement.
- 2. Respondents be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$ 26,816.65 as compensatory damages, inclusive of interest, for default on the obligations under the promissory note executed by Karpus.
- 3. All other requests for relief are hereby denied.

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 = \$1,000.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, Cantor Fitzgerald & Co. and Tradition (North America) Inc. are parties.

Cantor Fitzgerald & Co.

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

Tradition (North America) 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:

November 15, 16, 28 & 29, 2000, adjournment by Respondents	= \$1,125.00
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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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator x \$450.00	= \$ 900.00
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Pre-hearing conferences:	January 9, 2001	1 session
	January 10, 2001	1 session

Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$2,250.00
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Pre-hearing conferences:	July 27, 2000	1 session
	September 20, 2000	1 session

Six (6) Hearing sessions x \$1,125.00		= \$6,750.00
Hearing Dates:	January 11, 2001	2 sessions
	January 18, 2001	2 sessions
	February 13, 2001	2 sessions
Total Forum Fees		= \$9,900.00

1. The Panel has assessed \$4,950.00 of the forum fees against Claimant.
2. The Panel has assessed \$4,950.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	<u>= \$ 4,950.00</u>
Total Fees	= \$10,550.00
<u>Less payments</u>	<u>= \$ 6,725.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,825.00
2. Tradition be and hereby is solely liable for:

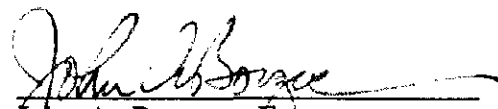
<u>Member Fees</u>	<u>= \$ 4,600.00</u>
Total Fees	= \$ 4,600.00
<u>Less payments</u>	<u>= \$ 4,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00
3. Respondents be and hereby are jointly and severally liable for:

Adjournment Fee	= \$ 1,125.00
<u>Forum Fees</u>	<u>= \$ 4,950.00</u>
Total Fees	= \$ 6,075.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 6,075.00

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



John A. Borgese, Esq.
Industry Arbitrator, Presiding Chair

Signature Date

Harry J. Lundgren, Jr.
Industry Arbitrator

Signature Date

Catherine I. Gulevich
Industry Arbitrator

Signature Date

March 30, 2001
Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

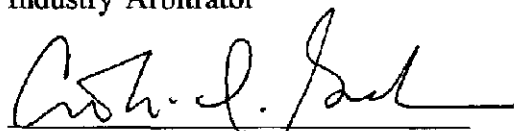
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

John A. Borgese, Esq.
Industry Arbitrator, Presiding Chair

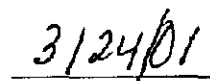
Signature Date

Harry J. Lundgren, Jr.
Industry Arbitrator

Signature Date



Catherine I. Gulevich
Industry Arbitrator



Signature Date

March 30, 2001
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