

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Surina Piyadasa, Claimant v. Coast Partners Securities, Inc. (now known as Coast Partners Financial Corporation) and Richard A. Sleight, Respondents

Case Number: 00-01810

Hearing Site: San Francisco, California

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Nature of the Dispute: Associated Person v. Member and Associated Person

**REPRESENTATION OF PARTIES**

For Claimant:

Paul Smoot, Esq.  
Anderlini, Finkelstein,  
Emerick & Smoot, P.C.  
San Mateo, California

For Respondents:

Roger W. Sleight, Esq.  
Sedgwick, Detert, Moran &  
Arnold, LLP  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: May 2, 2000

Claimant's Uniform Submission Agreement signed: April 29, 2000

Respondents' Joint Statement of Answer with Counterclaim by Respondent Coast Partners Securities, Inc. filed: June 28, 2000

### **CASE SUMMARY**

Claimant alleged violation of the California Fair Employment and Housing Act ("FEHA"), Government Code Sections 12900 et seq., violation of the California Equal Employment Act, Equal Pay Act, Labor Code Section 1197.5, breach of contract and by amendments, alter ego and *quantum meruit*. Claimant alleged that these violations occurred during the term of her employment with Coast Partners Securities, Inc. ("Coast") and that Coast was a small firm that emphasized the sale of tax-exempt securities.

Respondents denied Claimant's allegations of wrongdoing and asserted affirmative defenses. Respondent Coast also filed a counterclaim alleging that Claimant failed to repay recoverable commission advances.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$200,000.00, unpaid commissions in the amount of \$200,000.00, and punitive damages in the amount of \$100,000.00. Claimant also requested interest on the compensatory damages at the legal rate from February 28, 1999, through the present, reasonable attorney's fees and costs associated with this arbitration.

Respondents requested dismissal of Claimant's Statement of Claim in its entirety, and costs, including attorney's fees. In its counterclaim, Respondent Coast requested \$10,860.87, plus interest from January 1, 1999, for recoverable commission draws.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On April 4, 2001, Claimant requested leave to amend her claim to add, among other things, allegations of fraud and alter ego. On April 9, 2001, Respondents filed an Opposition. On April 11, 2001, the Panel held a pre-hearing conference with the parties to hear oral argument on Claimant's request. After due deliberation, the Panel denied Claimant's request to add fraud and granted her request to add alter ego. Furthermore, the Panel bifurcated Claimant's alter ego claim and directed that a Partial Final Award be issued on the other claims with the Panel retaining jurisdiction to hold a further hearing, if necessary, on the alter ego claim.

The Partial Final Award was served on June 18, 2001 and is incorporated by reference, in its entirety, into this Final Award.

On July 23, 2001, Claimant advised NASD Dispute Resolution that she wished to pursue her alter ego claim.

On November 21, 2001, Respondent Richard A. Sleight filed a motion to dismiss the alter ego claim. On December 14, 2001, Claimant filed an Opposition. On December 19, 2001, Respondent Richard A. Sleight filed a Reply in support of his motion. On January 3, 2002, the Panel held an in-person pre-hearing conference with the parties to hear oral argument on the motion. After due deliberation, the Panel denied Respondent Richard A. Sleight's Motion to Dismiss.

Respondents did not file with the NASD Dispute Resolution a properly executed submission agreement but are required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

On March 8, 2005, NASD Dispute Resolution received notice that Respondent Richard A. Sleight filed for Chapter 7 Bankruptcy. On March 14, 2005, the Chairperson ordered that this matter be stayed until the resolution of the Bankruptcy Proceedings.

On December 8, 2005, Claimant advised NASD Dispute Resolution that Respondent Richard A. Sleight was granted a discharge by the United States Bankruptcy Court (Northern District of California). As result of the discharge, Claimant dismissed with prejudice his claims against Respondent Richard A. Sleight and requested a Final Award in this matter. Respondents did not oppose the request for a Final Award.

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

- 1) The Partial Final Award issued on June 18, 2001, is incorporated herein by reference.
- 2) The assessment of all NASD forum fees accruing after the issuance of the Partial Final Award is stated in the Fee Section below.
- 3) All other relief requested and not expressly granted is denied.

### **FEEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
Respondent Coast Partners Securities, Inc.'s Counterclaim filing fee	= \$ 750.00

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Coast Partners Securities, Inc. (now known as Coast Partners Financial Corporation) is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 2,500.00</u>
<b>Total Member Fees</b>	<b>= \$ 4,600.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

Adjournment of the May 20-23, 2002 hearings requested by Claimant	= waived
Adjournment of the October 26, 2004 to November 2, 2004 hearings requested by all parties	= \$ 1,125.00

1. The Panel assessed \$562.50 of the adjournment fee to Claimant.
2. \$562.50 of the adjournment fee is waived.

**Forum Fees and Assessments (prior to June 18, 2001)**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences:	
December 15, 2000	1 session
April 11, 2001	1 session
(10) Hearing sessions @ \$1,125.00/session	= \$11,250.00
Hearings:	
April 17, 2001	1 session
April 18, 2001	2 sessions
April 19, 2001	2 sessions
April 20, 2001	2 sessions
April 27, 2001	2 sessions
May 18, 2001	1 session

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<b>Total Forum Fees</b>	<b>= \$13,500.00</b>
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1. The Panel assessed the entire \$13,500.00 in forum fees to Respondent Coast.

**Forum Fees and Assessments (after June 18, 2001)**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

(7) Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 7,875.00
Pre-hearing conferences:	
August 21, 2001	1 session
October 22, 2001	1 session
January 3, 2002	1 session
January 9, 2002	1 session
December 22, 2003	1 session
April 26, 2004	1 session
October 7, 2004	1 session

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<b>Total Forum Fees</b>	<b>= \$ 7,875.00</b>
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1. The Panel assessed \$2,812.50 of the forum fees to Claimant.
2. \$5,062.50 of the forum fees are waived.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	<u>= \$ 2,812.50</u>
Total Fees	= \$ 3,675.00
<u>Less payments</u>	<u>= \$(2,175.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,500.00</b>

2. Respondent Coast Partners Securities, Inc. (now known as Coast Partners Financial Corporation) is charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 750.00
Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	<u>= \$ 13,500.00</u>
Total Fees	= \$ 18,850.00
<u>Less payments</u>	<u>= \$ (3,000.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 15,850.00</b>

All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Charles E. Farnsworth	-	Public Arbitrator, Presiding Chair
Harve E. Citrin	-	Public Arbitrator
Omar J. Brubaker	-	Public Arbitrator

**Concurring Arbitrators' Signatures**



Charles E. Farnsworth  
Chair, Public Arbitrator

2/7/06  
Signature Date

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Harve E. Citrin  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Omar J. Brubaker  
Public Arbitrator

\_\_\_\_\_  
Signature Date

2/10/06  
Date of Service

**ARBITRATION PANEL**

Charles E. Farnsworth	-	Public Arbitrator, Presiding Chair
Harve E. Citrin	-	Public Arbitrator
Omar J. Brubaker	-	Public Arbitrator

**Concurring Arbitrators' Signatures**


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Charles E. Farnsworth  
Chair, Public Arbitrator

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Signature Date

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Harve E. Citrin  
Public Arbitrator

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Signature Date

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Omar J. Brubaker  
Public Arbitrator

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Signature Date

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2/10/06

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Date of Service

**ARBITRATION PANEL**

Charles E. Farnsworth	-	Public Arbitrator, Presiding Chair
Harve E. Citrin	-	Public Arbitrator
Omar J. Brubaker	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

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Chair, Public Arbitrator

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Signature Date


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Harve E. Citrin  
Public Arbitrator

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Signature Date

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Omar J. Brubaker  
Public Arbitrator

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2/3/06  
Signature Date

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2/10/06  
Date of Service

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**Partial Final Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between: Surina Piyadasa, Claimant vs. Coast Partners Securities, Inc. (now known as Coast Partners Financial Corporation) and Richard A. Sleight, Respondents

Case Number: 00-01810

Hearing Site: San Francisco, California

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**REPRESENTATION OF PARTIES**

Claimant, Surina Piyadasa, hereinafter referred to as "Claimant": Paul J. Smoot, Esq., Anderlini, Finkelstein & Emerick, San Mateo, California.

Respondents, Coast Partners Securities, Inc. (now known as Coast Partners Financial Corporation) ("Coast") and Richard A. Sleight ("Sleight"), hereinafter collectively referred to as "Respondents": Roger W. Sleight, Esq., Sedgwick, Detert, Moran & Arnold, San Francisco, California.

**CASE INFORMATION**

Statement of Claim filed: May 2, 2000

Claimant signed the Uniform Submission Agreement: April 29, 2000

Joint Statement of Answer filed by Respondents: June 28, 2000

**CASE SUMMARY**

Claimant alleged breach of contract, violation of the California Fair Employment and Housing Act ("FEHA"), Government Code Sections 12900 et seq. and violation of the California Equal Employment Act, Equal Pay Act, Labor Code Section 1197.5, and by amendments, alter ego and *quantum meruit*. Claimant alleged that these violations occurred during the term of her employment with Coast Partners Securities, Inc. ("Coast") and that Coast was a small firm that emphasized the sale of tax-exempt securities.

Respondents denied Claimant's allegations of wrongdoing and asserted affirmative defenses. Respondents also filed a counterclaim alleging that Claimant failed to repay recoverable advances against commissions.

Claimant denied Respondents' allegations of wrongdoing contained in the Respondents' counterclaim.

The Panel, by Order on April 11, 2001, bifurcated the Claimant's alter ego claim and directed that a Partial Final Award be issued on the other claims, with the Panel retaining jurisdiction to hold a further hearing, if necessary, on the alter ego claim.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$200,000.00, unpaid commissions in the amount of \$200,000.00 and punitive damages in the amount of \$100,000.00. Claimant also requested compensation for reasonable attorney's fees and for costs associated with this arbitration.

Respondents requested that the claim against them be dismissed. Respondents also requested for \$10,860.87, plus interest from January 1, 1999, for draws against commissions.

### **OTHER ISSUES CONSIDERED AND DECIDED**

This Partial Final Award is made pursuant to the Panel's order of April 11, 2001, and will become final 60 days from its issuance unless Claimant requests further proceedings on her *alter ego* claim. Should Claimant so desire, she is instructed to make such a request in writing to the NASD on or before the 60<sup>th</sup> day after the issuance of this award.

Respondents Coast Partners Securities, Inc. and Richard A. Sleight did not file with NASD Dispute Resolution, Inc. properly executed submission agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim and appeared and testified at the hearing, are bound by the determination of the Arbitration Panel on all issues submitted.

### **PARTIAL FINAL AWARD**

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

Claimant's claim for discrimination and harassment in violation of the California FEHA is denied. Although testimony indicated some instances of inappropriate conduct in her workplace, the overall conduct during her entire period of employment was insufficiently severe or pervasive to demonstrate an abusive or hostile working environment. In view

of this determination, it is unnecessary to resolve the statute of limitations defense or the "continuing activity" exception to it.

Claimant's Registered Representative Agreement (Cl. Ex. 1) gives her the right to sales commissions "earned" only for those "transactions entered into" during her employment with Respondent. An engagement letter was signed by Coast Partners Securities with Southwest PCS in June 1998 and Coast's fees for placing the financing were reconfirmed in October. Claimant resigned on February 28, 1999, before the Southwest PCS financing closed on April 29. Based on these events, the arbitration panel concludes that the Southwest "transaction" had been in process, and therefore had been "entered into," during Claimant's employment.

The Panel further finds that Respondent breached its contract with Claimant by failing to properly compute her commission for her work on the Southwest financing, and by failing to pay her any fee whatsoever. Initially, Respondent violated its general rule of assigning about 20% of the total fee to the sales force, reducing the sales pool in this case for the improper purpose of providing 5% of that fee to a non-salesman, Brian Gilmore. We find the reasonably expected sales pool to have been 18% of the total fee, or \$287,371. Claimant's share of this fee was, according to her contract (Cl. Ex. 2), "to be negotiated on a per deal basis," but nothing was paid at all, although Respondent conceded some commission was due. Respondent Richard Sleight told Claimant in January 1999 that she would receive 35/77ths (the fraction of the investment that Paribas Bank was "taking down directly") of the estimated sales pool of \$240,000, but this proposal was not accepted by Claimant. Nevertheless, Mr. Sleight's statement does, in the Panel's opinion, represent recognition of the minimum commission due to Claimant. In the end, Respondents conceded (Resp. Ex. M) that Claimant was entitled to 36% of the sales pool. Applied to the adjusted sales pool of \$287,371, this share yields a commission for Claimant of \$103,454 for the direct Paribas financing and for Claimant's work on the Allied financing.

In addition, however, the Panel believes that Claimant is entitled to some fee for the syndicated financing provided by Paribas. She, after all, "found" Paribas for Respondents and without that effort there would have been no Paribas deal and no successful financing for Southwest PCS. Mr. Sleight testified that it was his custom to pay a 0.25% "finder's fee" to anyone who identified a successful source of financing for Coast. The Panel concludes that Claimant, having introduced Respondents to Paribas Bank, is also entitled to such a "finder's fee" on the \$35 million that Paribas syndicated in the deal, that is, \$87,500.

Thus Claimant's proper commission under the Agreement is calculated to be \$190,954, and she is awarded that amount against Respondents Coast Partners Securities, Inc. and Coast Partners Financial Corporation, its successor entity, for her breach of contract claim. The claim against Richard Sleight individually is denied because he signed the Agreement only as a corporate representative.

The Panel determines that this one-time award of commission is, in effect, "compensation" and may be properly paid pursuant to her bona fide contract, under NASD Rule 2420, in accordance with Interpretive Memorandum 2420-2.

Respondent Coast Partners Financial Corporation's counterclaim of \$10,860 for advances against commissions is granted, with 10% legal interest from February 28, 1999 until paid, and is allowed as a credit against the award for Claimant.

Claimant is awarded 10% legal interest on her award of \$190,954.00 only from the date of this award because the amount due was not previously capable of calculation, as that term is used in Civil Code section 3287.

Respondent Coast Partners Financial Corporation is assessed NASD forum fees, the exact amount to be determined before the issuance of the final award in this matter. Respondents are denied their request for fees and costs.

All other claims, including those for violation of the Equal Pay Act, constructive discharge, *quantum meruit*, attorneys fees, compensatory damages and punitive damages are denied.

All claims against Richard A. Sleight individually are denied, but jurisdiction of this NASD arbitration over him is continued for purposes of any proceeding on Claimant's *alter ego* allegations.

### **FEES**

A complete assessment of the fees and costs associated with this arbitration has been reserved until the issuance of the final Award in this matter.

### **ARBITRATION PANEL**

Charles E. Farnsworth	-	Public Arbitrator, Presiding Chair
Peter Brabbee	-	Public Arbitrator
Omar J. Brubaker	-	Public Arbitrator

Concurring Arbitrators' Signature(s)



Charles E. Farnsworth  
Public Arbitrator, Presiding Chair

6/8/01  
Signature Date

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Peter Brabbee  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Omar J. Brubak  
Public Arbitrator

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Signature Date

6-18-01  
Date of Service (For NASD-Dispute Resolution office use only)

Concurring Arbitrators' Signature(s)

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Charles E. Farnsworth  
Public Arbitrator, Presiding Chair

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Signature Date

Peter Brabbee  
Peter Brabbee  
Public Arbitrator

June 11, 2001  
Signature Date

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Omar J. Brubak  
Public Arbitrator

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Signature Date

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Date of Service (For NASD-Dispute Resolution office use only)

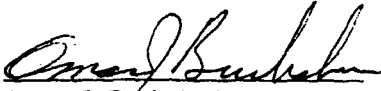
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Public Arbitrator

6/9/01  
Signature Date

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