

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

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In the Matter of the Arbitration Between:

Rickel & Associates, Inc., Claimant v. John W. Laurienti, Respondent

John W. Laurienti, Third Party Claimant v. Kenneth Rickel, Elliot J. Smith, and Gregg A. Smith,  
Third Party Respondents

Case Number: 01-01310

Hearing Site: San Diego, California

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**REPRESENTATION OF PARTIES**

For Claimant Rickel & Associates, Inc.  
and Third Party Respondent Kenneth Rickel:

Derek A. Wolman, Esq.  
Wolman, Babitt & King, L.L.P.  
New York, New York

For Respondent/Third Party Claimant John W. Laurienti:

John W. Laurienti  
In Pro Per  
San Diego, California

For Third Party Respondents Elliot J. Smith  
and Gregg A. Smith:

Robert M. Bursky, Esq.  
Attorney and Counselor at Law  
Huntington, New York

**CASE INFORMATION**

Statement of Claim filed: March 12, 2001

Claimant Rickel & Associates, Inc.'s Uniform Submission Agreement signed: March 21, 2001

Statement of Answer and Third Party Claim filed by Respondent/Third Party Claimant  
John W. Laurienti: June 27, 2001

Statement of Answer to Third Party Claim filed by Third Party Respondent Kenneth Rickel:  
October 16, 2001

Joint Statement of Answer to Third Party Claim filed by Third Party Respondents Elliot J. Smith  
and Gregg A. Smith: October 16, 2001

### **CASE SUMMARY**

In their Statement of Claim, Claimant Rickel & Associates, Inc. alleged failure to turn over property in violation of the Bankruptcy Code, and breach of contract.

Respondent/Third Party Claimant John W. Laurienti denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

In his Third Party Claim, Respondent/Third Party Claimant John W. Laurienti alleged misrepresentation, fraud, negligence, breach of fiduciary duty, and unjust enrichment.

Third Party Respondents Kenneth Rickel, Elliot J. Smith, and Gregg A. Smith denied the allegations of wrongdoing set forth in Respondent/Third Party Claimant John W. Laurienti's Third Party Claim.

### **RELIEF REQUESTED**

In their Statement of Claim, Claimant Rickel & Associates, Inc. requested actual damages in the amount of \$198,676.32, interest, and arbitration costs.

Respondent/Third Party Claimant John W. Laureinti requested dismissal of the Claimant's Statement of Claim in its entirety; or unspecified damages on the allegation of misrepresentation and fraud.

In his Third Party Claim, Respondent/Third Party Claimant John W. Laureinti requested compensatory damages in the amount of \$625,000.00, punitive or exemplary damages in the amount of \$500,000.00, and attorney's fees.

Third Party Respondent Kenneth Rickel requested dismissal of the Third Party Claim in its entirety.

Third Party Respondents Elliot J. Smith and Gregg A. Smith requested dismissal of the Third Party Claim in its entirety, and arbitration costs, including attorney's fees.

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

On September 24, 2002, NASD Dispute Resolution received notice that Simon S. Kogan withdrew from representation of Respondent/Third Party Claimant John Laurienti.

On September 30, 2002, the hearing convened at 9:00 A.M. Claimant's Counsel informed the Panel that he had spoken to Respondent's Counsel Simon Kogan on September 27, 2002 and Respondent's Counsel said he had withdrawn from representation of Respondent/Third Party Claimant John W. Laurienti. Claimant's Counsel said he had spoken to Respondent/Third Party Claimant John W. Laurienti the morning of the hearing and Respondent/Third Party Claimant John W. Laurienti indicated he would not attend the hearing.

The Panel had NASD Dispute Resolution staff contact Respondent/Third Party Claimant John W. Laurienti to confirm Counsel's withdrawal and advise Respondent/Third Party Claimant John W. Laurienti of the consequences if he did not attend the hearing. At the request of Respondent/Third Party Claimant John W. Laurienti relayed through NASD Dispute Resolution staff, hearing recessed until 11:00 A.M. to allow Respondent/Third Party Claimant John W. Laurienti to appear and make a motion to continue.

The hearing reconvened at 11:00 A.M. so Respondent/Third Party Claimant John W. Laurienti could appear and make a motion to continue. Claimant Rickel & Associates, Inc. and Third Party Respondents Kenneth Rickel, Elliot J. Smith, and Gregg A. Smith objected to the motion to continue. The Panel denied the motion to continue but granted Respondent/Third Party Claimant John W. Laurienti's request to take a lunch recess so he could decide whether to continue and to further prepare.

When hearing reconvened after lunch recess, Claimant's Counsel stated Respondent/Third Party Claimant John W. Laurienti called him to say he would not return to the hearing. When Respondent/Third Party Claimant John W. Laurienti did not return to the hearing, Third Party Respondents Kenneth Rickel, Elliot J. Smith, and Gregg A. Smith moved to dismiss Third Party Claim. The motion to dismiss Third Party Claim was granted.

Respondent/Third Party Claimant John W. Laurienti did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, is bound by the determination of the Panel on all issues submitted.

Third Party Respondents Kenneth Rickel, Elliot J. Smith, and Gregg A. Smith did not file with the NASD Dispute Resolution properly executed submission agreements 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.

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) Respondent/Third Party Claimant John W. Laurienti is liable to and shall pay Claimant Rickel & Associates, Inc. \$196,726.32 in actual damages.
- 2) Respondent/Third Party Claimant John W. Laurienti is liable to and shall pay Claimant Rickel & Associates, Inc. interest at the statutory rate of 10% per annum on the sum \$196,726.32 from (and including) September 1, 1997 until paid.
- 3) Respondent/Third Party Claimant John W. Laurienti is liable to and shall pay Third Party Respondents Elliot J. Smith and Gregg A. Smith attorney's fees and costs in the amount of \$14,500.00.
- 4) Third Party Respondents Kenneth Rickel, Elliot J. Smith, and Gregg A. Smith are dismissed with prejudice.
- 5) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 6) All other relief requested and not expressly granted is denied.

### **FEES**

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	= \$ 1,000.00
Respondent/Third Party Claimant John W. Laurienti's	
Third Party Claim filing fee	= \$ 500.00

### **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 Rickel & Associates, Inc. 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>= \$ 4,500.00</u>
<b>Total Member Fees</b>	<b>= \$ 6,600.00</b>

### **Adjournment Fees**

The following adjournment fees are assessed:

Hearing Dates, July 16, 2002 – July 19, 2002	
adjournment requested by Rickel & Associates, Inc.	= \$ 1,125.00

### **Forum Fees and Assessments**

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 Panel. The following fees are assessed:

3 Pre-hearing conference sessions with the Panel @ \$ 1,200.00/session	= \$ 3,600.00
Pre-hearing conferences:	
February 22, 2002	1 session
May 29, 2002	1 session
June 4, 2002	1 session
2 Hearing sessions @ \$ 1,200.00/session	= \$ 2,400.00
Hearing:	
September 30, 2002	2 sessions
<b>Total Forum Fees</b>	<b>= \$ 6,000.00</b>

1. The Panel assessed \$ 1,600.00 of the forum fees to Claimant Rickel & Associates, Inc.
2. The Panel assessed \$ 3,200.00 of the forum fees to Respondent/Third Party Claimant John W. Laurienti.
3. The Panel waived the \$ 1,200.00 forum fee for the pre-hearing conference conducted on May 29, 2002.

**Fee Summary**

1. Claimant Rickel & Associates, Inc. is charged with the following fees and costs:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 6,600.00
Adjournment Fee	= \$ 1,125.00
Forum Fees	= \$ 1,600.00
<hr/> Total Fees	<hr/> = \$10,325.00
Less payments	= \$( 7,850.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,475.00</b>
  
2. Respondent/Third Party Claimant John W. Laurienti is charged with the following fees and costs:

Third Party Claim Filing Fee	= \$ 500.00
Forum Fees	= \$ 3,200.00
<hr/> <b>Balance Due NASD Dispute Resolution</b>	<hr/> <b>= \$ 3,700.00</b>
  
3. Third Party Respondent Elliot J. Smith was not assessed any fees or costs. Third Party Respondent Elliot J. Smith's \$750 deposit will be refunded.

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**

James A. Bush, Esq.

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Non-Public Arbitrator, Presiding Chair

Lisa M. Roth

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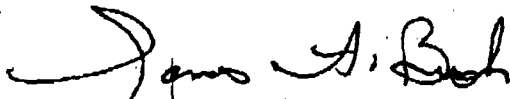
Non-Public Arbitrator

Roger T. Verhage

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Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



James A. Bush, Esq.  
Chair, Non-Public Arbitrator

11/5/02  
Signature Date

Lisa M. Roth  
Non-Public Arbitrator

Signature Date

Roger T. Verhage  
Non-Public Arbitrator

Signature Date

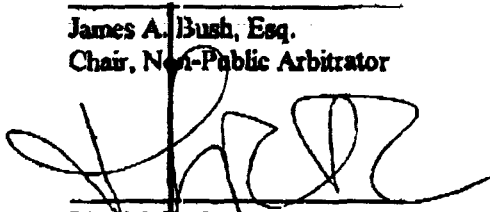
11/08/02  
Date of Service

**ARBITRATION PANEL**

James A. Bush, Esq.	-	Non-Public Arbitrator, Presiding Chair
Lisa M. Roth	-	Non-Public Arbitrator
Roger T. Verhage	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

James A. Bush, Esq.  
Chair, Non-Public Arbitrator



Lisa M. Roth  
Non-Public Arbitrator

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

11/5/02  
Signature Date

Roger T. Verhage  
Non-Public Arbitrator

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Signature Date

11/8/02  
Date of Service