

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 05-04728

National Securities Corporation, (Claimant/Counterclaim Respondent) vs. Phillip V. Renz,
Michael L. Aga, Thomas J. Mackenroth, Kenneth S. Bush and Robert Thorson,
(Respondents/Counterclaim Claimants)

ATTORNEYS:

For Claimant/Counterclaim Respondent appeared James K. Barbee, Esq., of the firm Golbeck
Roth, PLLC, Seattle, WA.

For Respondents/Counterclaim Claimants appeared Derek Y. Brandt, Esq., of the firm Simmons
Cooper LLC, Chicago, IL.

NATURE OF DISPUTE: Member v. Associated Persons

DATE FILED: September 9, 2005

CASE SUMMARY: Claimant/Counterclaim Respondent alleged that
Respondents/Counterclaim Claimants failed to repay monies owed for usual business debits
incurred while they were employed by Claimant/Counterclaim Respondent.
Claimant/Counterclaim Respondent maintained that due to Respondents/Counterclaim
Claimants' actions, the firm suffered financial losses.

COUNTERCLAIM SUMMARY: Respondents/Counterclaim Claimants alleged that
Claimant/Counterclaim Respondent failed to repay monies owed for withheld earned
commissions. Respondents/Counterclaim Claimants maintained that due to
Claimant/Counterclaim Respondent's actions, they suffered financial losses.

ARBITRATOR'S REPORT: See attached Exhibit A.

Claim Data

Claim: \$13,696.48
Interest: \$.00

Counterclaim Data

Claim: \$4,070.38
Interest: \$.00

Attorney Fees: Unspecified
Filing Fees: Unspecified
Punitive Damages: Unspecified
Specific Performance: Disciplinary Referral

Award Data

Award: \$2,254.95
Interest: granted at the rate of 12%
per annum from 8/30/05-payment of
award.

Award Data

Award: \$4,070.38
Interest: granted at the rate of 12%
per annum from 8/30/05-payment of
award.
Attorney Fees: \$.00
Filing Fees: \$.00
Punitive Damages: \$.00
Specific Performance: Denied

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondent/Counterclaim Claimant Robert Thorson is liable and shall pay to the Claimant/Counterclaim Respondent \$1,156.64. 2) Respondent/Counterclaim Claimant Michael L. Aga is liable and shall pay to the Claimant/Counterclaim Respondent \$600.28. 3) Respondent/Counterclaim Claimant Thomas J. Mackenroth is liable and shall pay to the Claimant/Counterclaim Respondent \$498.03. 4) Respondents/Counterclaim Claimants Robert Thorson, Michael L. Aga and Thomas J. Mackenroth are liable and shall pay Claimant/Counterclaim Respondent interest at the rate of 12% per annum from August 30, 2005 until the date of payment of the award. 5) All other relief requests are denied. 6) NASD Dispute Resolution shall retain the \$1,050.00 filing fee that the Claimant/Counterclaim Respondent deposited previously.

COUNTERCLAIM AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Claimant/Counterclaim Respondent is liable and shall pay to the Respondent/Counterclaim Claimant Phillip V. Renz \$2,071.55. 2) Claimant/Counterclaim Respondent is liable and shall pay to the Respondent/Counterclaim Claimant Kenneth S. Bush \$1,998.83. 3) Claimant/Counterclaim Respondent is liable and shall pay to the Respondents/Counterclaim Claimants Phillip V. Renz Kenneth S. Bush interest at the rate of 12% per annum from August 30, 2005 until the date of payment of the award. 3) All requests for attorney fees are denied. 4) All requests for punitive damages are denied. 5) All other relief requests are denied. 6) NASD Dispute Resolution shall retain the \$175.00 filing fee that the Respondents/Counterclaim Claimants deposited previously.

OTHER FEES: Pursuant to Rule 10333 of the Code, Claimant/Counterclaim Respondent has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

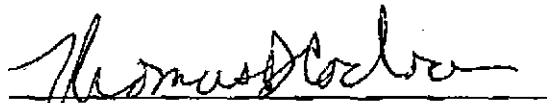
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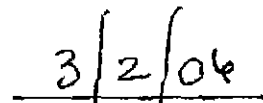
Thomas D. Cochran, Esq.

Sole Non-Public Arbitrator

AFFIRMATION

I, Thomas D. Cochran, Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


Thomas D. Cochran, Esq.


(Signature Date)

March 3, 2006

Date of Service (For NASD-DR office use only)

Exhibit A

IN ARBITRATION BEFORE NASD DISPUTE RESOLUTION

NATIONAL SECURITIES
CORPORATION,

Claimant,

vs,

PHILLIP RENZ, ROBERT THORSON,
MICHAEL AGA, THOMAS
MACKENROTH, and KENNETH BUSH,

Respondents.

NASD-DR ARBITRATION
No. 05-04728

DECISION AND AWARD OF
ARBITRATOR

This matter has been submitted to the undersigned Arbitrator for decision and award upon the pleadings and documentary evidence filed by the parties without a hearing pursuant to the Simplified Industry Arbitration Rules and Procedure of the NASD Dispute Resolution Code of Arbitration Procedure.

I. Parties

The parties to the arbitration are: (1) National Securities Corporation ("NSC"), Claimant; and (2) Respondents, Phillip Renz, Robert Thorson, Michael Aga, Thomas Mackenroth, and Kenneth Bush ("Respondents"). Respondents are all former registered representatives affiliated with NSC. Respondents each resigned in July, 2005.

II. CRD Registration

The CRD registration number of the various Respondents are as follows:

- | | |
|----------------------|-----------------|
| a. Phillip Renz | (CRD # 1183869) |
| b. Robert Thorson | (CRD # 806446) |
| c. Michael Aga | (CRD # 1145048) |
| d. Thomas Mackenroth | (CRD # 1288723) |
| e. Kenneth Bush | (CRD # 1214629) |

Decision and Award of Arbitrator - 1

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WITHERSPOON, KELLEY, DAVENPORT & TOOLE
A PROFESSIONAL SERVICE CORPORATION
ATTORNEYS & COUNSELORS

III. Pleadings and Documentary Evidence

The following is a listing of the pleadings and documentary evidence presented in this matter and upon which the decision and award are based. The documents are:

- a. Submission Agreements of Claimant and all Respondents;
- b. Statement of Claim of Claimant NSC including exhibit A-E thereto;
- c. Statement of Answer and Counterclaim of Respondents including exhibit 1-3 thereto;
- d. December 20, 2005, NSC response to counterclaim including Exhibit A thereto;
- e. January 19, 2006, Respondents' reply to Claimant's December 20, 2005, response to counterclaim;
- f. January 23, 2006, NSC response to counterclaimants' January 19 submission;
- g. February 10, 2006, submission by NSC providing additional documents consisting of Independent Contractor Agreements with amendments and addenda for all Respondents.

IV. Issues

All of the Respondents resigned from their arrangement with NSC at the end of July, 2005. At issue is what amount, if any, is owed to NSC by the various Respondents taking into account expenses incurred on their behalf by NSC and the commissions earned, collected and unpaid through August, 2005. Additionally, Respondents Renz and Bush assert counterclaims against NSC claiming that NSC owes money to them.

All parties have agreed to the accuracy of the commission and expense reports for July and August 2005 as to all entries except Respondents take exception to the charging for E & O insurances in the amount of \$2,860 per Respondent through May, 2006.

Thus, the issue for resolution is what amount, if any, could NSC charge the departing Respondents for E & O insurance at the time of their resignation and final accounting.

V. Parties Position

A. Claimant's Position

Concisely stated, claimant's position is that Respondents would not have been able to be affiliated with NSC unless they carried E & O insurance. NSC procured E & O insurance for its registered representatives on an annual basis. NSC then billed the registered representatives each month for one-twelfth of the annual premium (\$3,120.00) associated with each rep. This course of dealing had been going on for years. Since the insurance is procured on an annual basis and provide coverage through May 2006 to the Respondents as "incidental beneficiaries" and each independent contractor agreement allows NSC to offset from commissions due "expenses incurred by Company due to Contractor's activities" that NSC is entitled to offset the remaining ten months of premium against any seems due to Respondents. NSC argues that it is entitled to such a result because of contract and/or unjust enriching.

1 **B. Respondents' Position**

2 Respondents counter that they are only liable for a prorata portion of the coverage.
3 Respondents calculate this amount to be only one month's premium, ie, \$260 for the month
4 of July, 2005.

5 NSC counter that since the insurance provides coverage for the entire length of
6 association with NSC, that any proration would be minuscule. NSC did however, factoring
7 in the August, 2005, commissions reduced its claim to an aggregate of \$11,184.57.

8 **VI. Analysis**

9 The E & O insurance policy in question is a claims made policy and is for the policy
10 period of June 4, 2005 to June 4, 2006.

11 The policy insured NSC and any "past, present, and future registered representatives
12 of the Broker/Dealer." The policy has a retro date of January 6, 1947. The premium was
13 paid by NSC on a yearly basis

14 The policy was procured to protect NSC and its registered representatives from
15 certain covered claims arising in their securities activities.

16 The nature of the insuring clause clearly recognizes that the work force of NSC will
17 change during the course of the policy period. The cost of the policy is merely one of the
18 many costs of doing business for NSC

19 The policy provides benefits for NSC and Respondents while Respondents were
20 associated with NSC. Therefore, pursuant to the course of dealing and contractual
21 arrangements between the parties, it is reasonable for NSC to charge Respondents on a
22 prorata basis for the cost of insurance.

23 However, once Respondents were no longer associated with NSC it is not reasonable
24 to charge Respondents for insurance expense for the remainder of the policy period. The
25 costs have already been incurred. No new costs are incurred by NSC upon Respondents
26 resignation nor are new costs incurred during the policy period when new registered
27 representative are added by NSC.

28 When the policy is renewed, insurance coverage will again insure Respondents as
29 "past" registered representatives. NSC's argument carried to a logical conclusion would
30 mean that during the next policy period, Respondents would be receiving a benefit and thus
31 NSC could bill them for the cost of next years insurance and continuing on into each renewal
32 period. I think not. The Respondents are merely indirect beneficiaries of the policy. As
33 such, under the terms of the arrangement between the parties, each of the Respondents can
34 be charged an additional \$260 for July coverage only.

35 **VII. Decision and Award**

36 With the above in mind and after review of the commission runs of July and August
37 2005, the undersigned Arbitrator hereby decides and awards judgment as follows:

38 1. NSC is awarded a judgement against Robert Thorson in the amount of \$1,156.64
39 together with interest thereon at the rate of 12% per annum from August 30, 2005, until
40 paid;

41 2. NSC is awarded a judgement against Michael Aga in the amount of \$600.28
42 together with interest thereon at the rate of 12% annum from August 30, 2005, until paid;

43 3. NSC is awarded a judgement against Thomas Mackenrorth in the amount of
44 \$498.03 together with interest thereon at the rate of 12% per annum from August 30, 2005,
45 until paid;

46 Decision and Award of Arbitrator - 3

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1 4. Phillip Renz is awarded a judgement against NSC in the amount of \$2,071.55
2 together with interest thereon from August 30, 2005, until paid;

3 5. Kenneth Bush is awarded a judgment against NSC in the amount of \$1,998.83
4 together with the interest thereon from August 30, 2005, until paid.

5 This award resolves any and all issues in the above referenced matter.

6 DATED this 22nd day of February, 2006.

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8 THOMAS D. COCHRAN
9 ARBITRATOR
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