

AWARD
FINRA DISPUTE RESOLUTION

CASE: 10-03464

Ruth D. Goldstein (Claimant) vs. Cape Securities, Inc., James Randall Webb, and Kathi Renee Mansfield (Respondents)

REPRESENTATION OF PARTIES:

Claimant appeared *pro se*, Atlanta, GA.

For Respondents appeared Melissa Malcom, Esq., Melissa P. Malcom, LLC, McDonough, GA.

NATURE OF DISPUTE: Associated Person v. Member and Associated Persons

DATE FILED: July 23, 2010

CASE SUMMARY: Claimant asserted the following causes of action: breach of contract, employment compensation, and employment commission.

In their Counterclaim, Respondent Cape Securities Inc., asserted the following causes of action: breach of agreement and conversion, intentional interference, breach of fiduciary duty, and fraud.

ARBITRATOR'S REPORT: See attached Exhibit A.

Claim Data

Claim: \$25,000.00
Attorneys' Fees: \$1,843.00

Award Data

Award: \$11,700.00
Attorneys' Fees: \$0.00

Counterclaim Data

Claim: \$9,000.00
Claim: \$2,500.00 (computer)
Other: Unspecified

Award: \$0.00
Award: \$700.00
Other: \$0.00

AWARD: The undersigned Arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondent Cape Securities, Inc., is liable for and shall pay to Claimant compensatory damages of \$11,700.00. Respondent Cape Securities, Inc.'s award of \$700.00 shall be deducted from Claimant's award of \$11,700.00. Therefore, Respondent Cape Securities, Inc., shall remit to Claimant the sum of \$11,000.00. 2) Claimant's request for attorneys' fees is denied. 3) Claimant's other relief requests are denied. 4) FINRA Dispute Resolution previously deferred payment of Claimant's \$425.00 filing fee. The Arbitrator determined to assess the \$425.00 filing fee to Claimant.

COUNTERCLAIM AWARD: The undersigned Arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Claimant is liable for and shall pay to Respondent Cape Securities, Inc., compensatory damages of \$700.00. Respondent's award of \$700.00 shall be deducted from Claimant's award of \$11,700.00. 2) All other relief requests are denied. 3) FINRA Dispute Resolution shall retain the \$1,050.00 filing fee previously deposited by Respondent Cape Securities, Inc.

OTHER FEES: Respondent Cape Securities, Inc., was assessed the \$425.00 Member Surcharge.

OTHER ISSUES: The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

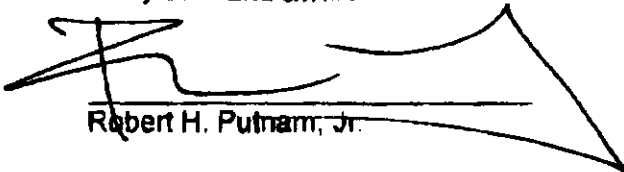
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Robert H. Putnam, Jr.

Sole Public Arbitrator

AFFIRMATION

I, Robert H. Putnam, Jr., the undersigned Arbitrator, 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.



Robert H. Putnam, Jr.

2-16-11
(Signature Date)

February 17, 2011
Date of Service (For FINRA-DR office use only)

EXHIBIT A

GOLDSTEIN AWARD NARRATIVE

Pro se Claimant asserts breach of an employment agreement, seeking compensation allegedly due while employed but unpaid, plus attorney fees incurred in a preceding civil action dismissed without prejudice pending this arbitration. Respondents are a broker-dealer ("BD"), its CEO/owner ("CEO"), and its Chief Compliance Officer ("CCO"). Respondents counterclaim for fraud, intentional interference with contractual and business relations, breach of a verbal employment agreement and for conversion of a laptop computer taken by Claimant when she departed.

The employment agreement upon which Claimant relies specifies that she is to be Chief Marketing Officer, and reads in part: "Ruth Goldstein will be a W-2 employee with a base salary for 2009 at \$5000 per month starting Monday, June 8, 2009 ...". The document also provides that if Claimant is terminated "not for cause", she will be entitled to a percentage of commissions for recruits brought to the organization. It is uncontested that Claimant drafted the document. It is signed by Claimant and by CEO, dated 6-29-09. Claimant was terminated by CEO October 26, 2009.

The extensive documentary record is replete with allegations and counter-allegations about the quality, effectiveness and worth of Claimant's work; about whether Claimant was an employee or independent contractor; about whether the 6-26-09 agreement as presented is the same one signed by CEO; about whether Claimant secured "recruits" for the company, and many other matters. A close review of the record results in dozens of questions and issues that, along with the above and other allegations, could have been sorted out at an evidentiary hearing, had not the parties determined to proceed solely on the record documents. Nevertheless, it is uncontested that CEO signed some document regarding Claimant's employment, although he alleges it did not contain all the provisions he and Claimant had discussed, and further, it was not the document presented here, although he did not keep a copy of the document he signed.

Based on a thorough review of the record, I find that the 6-26-09 agreement is the operative contract between Claimant and Respondent BD. Further: the contract calls for Claimant to receive more in salary than the \$9000 it is agreed she received; there is insufficient evidence for a finding that Claimant materially breached the contract; and there is insufficient evidence that Claimant is due any reasonably ascertainable sum from "recruit" commissions, even if she was not terminated for cause. Moreover, there is insufficient evidence of fraud to void the contract or for any damages award to any party on either claim or counterclaim, or to award damages for tortious interference. Nor is there sufficient evidence to hold either CEO or CCO liable for the contractual debts of BD. However, it is

uncontested that Claimant took a company laptop when she left, and although the value of that computer with software is contested, the machine itself cost \$700 when purchased.

Claimant Ruth D. Goldstein shall have and recover of Respondent Cape Securities, Inc. the sum of \$11,700 in unpaid salary, less \$700 cost of the laptop now in her possession, for a net award of \$11,000. Claimant is not entitled to recover attorney fees and expenses of the prior civil action in this proceeding. All other claims are denied. The parties shall bear their own costs.