

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Productivity Development Corp.

91-03387

Name of Respondent

Rotan Mosle Inc.

REPRESENTATION OF PARTIES

Claimant was represented by John J. Allan, III, its President.

Respondent was represented by Michael R. Alford, Esq. of PaineWebber, Inc., Miami, Florida.

CASE INFORMATION

The Statement of Claim was filed on or about October 28, 1991. Claimant's Submission Agreement was unsigned but notarized on November 14, 1991 as if signed by John J. Allan, III.

Statement of Answer filed by Respondent Rotan Mosle, Inc. on or about February 3, 1992. Respondent Rotan Mosle, Inc.'s Submission Agreement signed on January 30, 1992 by Patricia E. Court.

HEARING INFORMATION

The hearing was held on Friday, July 17, 1992 in Dallas, Texas for one (1) session.

CASE SUMMARY

Claimant alleged that he submitted certain shares of stock for sale by Respondent Rotan Mosle, Inc. Claimant further stated that the shares were not sold in a timely manner.

Respondent Rotan Mosie, Inc. stated that the stock submitted for sale was subject to restriction and could not be sold as requested. Respondent subsequently submitted additional paperwork necessary for sell the stock and ultimately sold the stock equal in value to the debit in his account which resulted from his having received the proceeds of the originally requested sale in advance. Rotan Mosie, Inc. asserted the following affirmative defenses: the Claimant fails to state a claim for which relief can be granted; estoppel; waiver; negligence of the Claimant; the Claimant failed to mitigate; the Claimant failed to use due diligence; and laches.

RELIEF REQUESTED

Claimant requested an award in the amount of \$6,105.38, plus interest at 9% per annum.

Respondent requested that this claim be dismissed and that it be awarded it's reasonable attorney's fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

Both parties waived the notice provisions set forth in Section 21 of the NASD Code of Arbitration Procedure.

The parties have agreed that a handwritten, signed Award may be entered and to receive conformed copies of the award while the original remains on file with the NASD.

AWARD

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

1. Respondent Rotan Mosie, Inc. shall be and hereby is liable for and shall pay to the Claimant Productivity Development Corporation the sum of \$3,000.00 (Three Thousand Dollars).
2. No interest is awarded on the above stated sum.
3. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the

non-refundable filing fee in the amount of \$75.00 and shall retain the hearing session deposit in the amount of \$200.00 previously deposited with the NASD by the Claimant as forum fees.

Forum fees are calculated at the rate of \$200.00 per hearing session and \$200.00 for each prehearing conference, if any.

Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

July 21, 1992

Harold A. Myrin

Harold A. Myrin, Esq.
Presiding Chair
Public Arbitration

Date of Decision:

July 21, 1992