

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

J.T. Moran and Co., Inc.

92-02172

Name of Respondent

Donald Securities Co., Inc.

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**REPRESENTATION**

For Claimant J. T. Moran & Company, Inc.: Robert Ouriel, Esq. of the law firm of Kurtzman & Haspel.

For Respondent Donald Securities Co., Inc.: Michael DiGiovanna, Esq. of the law firm of Dornbush Mensch Mandelstam & Schaeffer.

**CASE INFORMATION**

Statement of Claim filed on: June 22, 1992.

Claimant's Submission Agreement signed on: July 23, 1992.

Statement of Answer filed by Respondent on: September 16, 1992.

Respondent's Submission Agreement signed on: September 9, 1993.

**HEARING INFORMATION**

Hearing Date/Sessions: February 1, 1994 - 2 Sessions

Hearing Location: National Association of Securities Dealers, Inc. offices located in New York City, New York.

**CASE SUMMARY**

Claimant alleged that on or about January 24, 1990, Respondent and Claimant

entered into an agreement whereby Respondent agreed to purchase certain assets of the Claimant; that as an inducement for Claimant to enter into the Agreement, and as part of the purchase price for Claimant transferring the assets subject to the Agreement. Respondent agreed to remit to the Claimant three percent (3%) of the gross commissions earned by certain Registered Representatives employed by Claimant for the period of January 24, 1990 to January 25, 1991 as "office revenues"; that Claimant has duly demanded that Respondent pay the "office revenues"; and that Respondent has failed and refused to pay the "office revenues" owed to Claimant.

Respondent maintained that the Agreement, if not breached by the Claimant, obligated Respondent to make payments to Claimant based upon gross commissions earned of certain registered representatives; that the Agreement required Claimant to deliver a customer list of its former Shrewsbury office and transfer equipment located at the office; that Claimant was required to cooperate with the transfer of registered representatives at the office; and that Claimant made representations that Claimant had marketable title to all equipment.

Respondent further maintained that Claimant never delivered the customer list to the Respondent; that another registered broker-dealer obtained a copy of the list from Claimant or its agent in breach of the Agreement; that Claimant did not cooperate with the transfer of registered representatives in further breach of the agreement; that the telephone equipment at the facility was leased so that Claimant could not deliver marketable title to all equipment; and that as a result of Claimant's breaches of the Agreement, no amounts are due to the Claimant.

#### **RELIEF REQUESTED**

Claimant requested the following: (1) An award against Respondent in the principal amount of \$50,000.00; (2) Interest on the award calculated from February 15, 1990; and (3) Costs of this proceeding including attorneys' fees.

Respondent requested an award dismissing the claim and entering an award in favor of Respondent against Claimant and providing for reimbursement of its attorneys' fees and all costs associated with this action, together with such other relief as may be just and proper.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

### AWARD

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

1. The Respondent be and hereby is liable and shall pay to the Claimant the principal sum of \$23,688.00.
2. The Respondent be and hereby is liable and shall pay to the Claimant interest in the sum of \$1,420.00.
3. Each party shall bear their respective costs including attorneys' fees.

### FORUM FEES

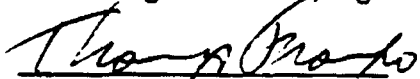
Pursuant to Section 44c of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 non-refundable filing fee and the \$600.00 hearing session deposit previously paid by Claimant and the following forum fees are assessed:

2 sessions X \$600 = \$1200 minus hearing session deposit of 600 = \$600 balance due.

Claimant be and hereby is liable and shall pay to the NASD the sum of \$300.00 to represent forum fees and the Respondent be and hereby is liable and shall pay to the NASD the sum of \$300.00 to represent forum fees.

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

Concurring Arbitrators' Signatures



Thomas Franko, Esq.

Chairman- Industry Arbitrator



Valarie Kindermann - Industry Arbitrator



Leon Goldsholl- Industry Arbitrator

Date of Decision: March 4, 1994

STATE OF NEW YORK  
COUNTY OF NEW YORK

On this 22 day of February, 1994, before me personally appeared Thomas A. [redacted] known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

DENISE PELLICANO  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES OCT. 15, 1998

Denise Pellicano

STATE OF NEW YORK  
COUNTY OF NEW YORK

On this 27 day of February, 1994, before me personally appeared Suzanne Kinderm  
known to me to be the individual described in and who executed the  
foregoing instrument and duly acknowledged to me that he/she executed the same.

Jean M. [Signature]

**JEAN M. DAVID  
NOTARY PUBLIC, State of New York  
No. 01282012078  
Qualified in Dutchess County  
Commission Expires July 12, 1995**

STATE OF NEW YORK  
COUNTY OF NEW YORK

On this <sup>March</sup> ~~4~~ day of ~~February~~, 1994, before me personally appeared Leon  
~~Edith~~ known to me to be the individual described in and who executed the  
foregoing instrument and duly acknowledged to me that he/she executed the same.

Deborah A. DeJesus

DEBORAH A. DEJESUS  
Notary Public, State of New York  
No. 02DE5022979  
Qualified in New York County  
Commission Expires January 24, 19 96