

N.A.S:D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Albert L. Barbara

92-02625

Name of Respondent(s)

Reich & Co., Inc.
Paul Fitzgerald

REPRESENTATION

For Claimant: Dan Brecher, Esq.

For Respondent Paul Fitzgerald: Edward J.M. Little, Esq. of Zuckerman, Spaeder, Goldstein Taylor & Kolker.

For Respondent Reich & Co., Inc.: Maria Lubienski Ciokajlo, Esq. of Cadwalader, Wickersgam & Taft

CASE INFORMATION

Statement of Claim filed: August 6, 1992.

Claimant's Submission Agreement signed on: July 27, 1992.

Statement of Answer filed by Respondent, Paul Fitzgerald on: October 19, 1994

Statement of Answer and Counterclaim filed by Respondent Reich & Co., Inc. on October 19, 1993.

Respondent, Paul Fitzgerald's failed to execute a Submission Agreement as is required pursuant to Section 12 of the Code of Arbitration Procedure.

Respondent Reich & Co., Inc.'s ("Reich") Submission Agreement signed on:
November 30, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: October 14, 1993/Two sessions
 November 15, 1993/One session
 December 6, 1993/Two sessions

Hearing Location: NASD offices located in New York City.

CASE SUMMARY

Claimant alleges his employment with Respondent Reich & Co., Inc. ("RCI") was commenced pursuant to an oral agreement with the management of Respondent RCI, the terms of which required Respondent RCI to pay Claimant 50% of commissions, 50% of the securities and cash earned by Claimant as investment banking fees, inclusion in Respondent RCI's 401(k) plan and reimbursement for business related investments. Claimant further alleges that Respondent RCI terminated him without cause and without notice and has failed and refused to provide an accounting and payment of certain sums and securities.

Respondent RCI maintains that it provided Claimant with an accounting of amounts due him pursuant to his profit participation agreement with Respondent RCI and offered to pay him those amounts. Respondent RCI further maintains that Claimant disputed some of the accounting and refused Respondent RCI's offer of payment. Respondent RCI maintains that Claimant's Statement of Claim fails to state a cause of action upon which relief may be granted and further maintains that Claimant is not entitled to an accounting at law.

In its Counterclaim, Respondent RCI alleges that it has been notified of litigation arising from its participation in a private placement for Plural Technologies, Inc. (Fire Retarding Co.) and further alleges that Claimant is liable for 50% of any costs, damages, other awards or settlement amounts, and legal fees incurred by RCI in connection with that threatened litigation.

In response to Respondent RCI's Counterclaim, Claimant denies that the Counterclaim has any basis in law or in fact. Claimant further maintains that Respondent RCI is guilty of laches and is estopped from making any claims against Claimant.

Respondent Paul Fitzgerald ("Fitzgerald") maintains that Claimant's claim rests exclusively on an alleged breach of an oral agreement negotiated with Respondent RCI and that, absent express intent to be personally bound by an agreement, a corporate officer cannot be held liable for its subsequent breach by the corporation. Respondent Fitzgerald further maintains that the alleged oral agreement and the termination of Respondent RCI occurred before Respondent Fitzgerald began working for Respondent RCI and that he did not ratify the oral agreement.

RELIEF REQUESTED

Claimant requests a complete accounting with respect to the distribution of commissions generated by Claimant, all transactions in the RCI's "syndicate account," and Claimant's participation in Respondent RCI's 401(k) Plan. Claimant further requests payment of all sums and delivery of all securities and other compensation due and such other and further relief, including reasonable attorneys' fees and liquidated damages for employee wage claims, as the Panel shall deem appropriate.

Respondent RCI requests that the Claim be denied, the Counterclaim be granted and that it be awarded reasonable attorneys' fees and out-of-pocket expenses.

Respondent Fitzgerald requests that the Claim be dismissed as to him, that he be awarded costs and attorneys' fees incurred in his defense, and that he be granted such other and further relief as the Panel may deem appropriate.

OTHER ISSUES CONSIDERED & DECIDED

Before rendering the Award, the Panel was informed that Claimant and Respondent Fitzgerald settled their claims against each other.

AWARD

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

- a) Reich is hereby liable and shall pay to Claimant the sum of \$332,892.07.
- b) Reich shall pay interest on the aforesaid amount at the rate of 9% from December 15, 1991 until the award is paid in full.
- c) Reich's Counterclaim is dismissed in its entirety with prejudice.
- d) Reich is hereby liable and shall pay to Claimant the sum of \$20,000.00 for Attorney's fee.
- e) Reich is hereby liable and shall deliver to Claimant 11,985 Protein Polymer Technologies warrants ("PPT").

With respect to respondent Fitzgerald and as per agreement between parties:

- a) Fitzgerald shall assign his rights to 6525 shares of PPT warrants.
- b) Fitzgerald's counterclaim is dismissed with prejudice.

FORUM FEES

Pursuant to Section c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Forum Fees:	\$5,000 (5 sessions X \$1,000)
Hearing Session Deposits:	\$1,200
Net Due:	\$3,800

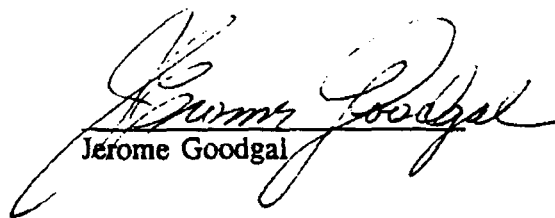
Respondent Reich & Co., Inc. is hereby liable and shall pay to the NASD. Inc. forum fees in the amount of \$3,800.

Respondent Reich & Co., Inc. is hereby liable and shall pay to Claimant the sum of \$600 as reimbursement for Claimant's hearing session deposit.

Jerome Goodgal respectfully dissents from Section d)
of the award.

Concurring Arbitrator's Signatures
Name

Public/Industry


Jerome Goodgal

Public

NASD Date of Decision: April 14, 1994

92-2625

STATE OF: ~~Delaware~~ Maryland
CITY OF: ~~Dover~~ Baltimore
City

S.S.:

On this 18th day of March, 1994, before me personally appeared Jerome Goodgal known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

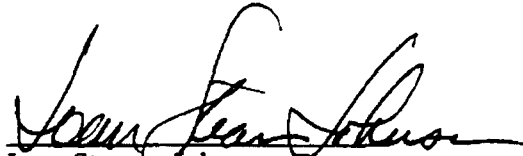
Paula A. Goodgal

7667 '01 1707
MY COMM. SEION EXPIRES
SERIES NOES 11000 1W

92-2025

Concurring Arbitrator's Signatures
Name

Public/Industry


Joan Stearns Johnsen, Esq.

Industry

Date of Decision: March 9, 1994

NASD Date of Decision: April 14, 1994

92-2625

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 9th day of March, 1994, before me personally appeared Joan Sterns-Johnson known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that she executed the same.

Maria Campese

MARIA A. CAMPESE
Notary Public, State of New York
No. 62-4985360
Qualified in Suffolk County 94
Commission Expires April 16, 19__

92-2625

Concurring Arbitrators' Signatures
Name

Public/Industry

Robert D. Herschmann
Robert D. Herschmann, Esq.

Public

Date of Decision: March 9, 1994

NASD Date of Decision: April 14, 1994

92-2625

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 9th day of March, 1994, before me personally appeared Robert D. Herschmann known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Maria Campese

MARIA A. CAMPESE
Notary Public, State of New York
No. 52-4965360
Qualified in Suffolk County
Commission Expires April 16, 1994