

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Bishop Rosen & Co., Inc.

vs.

Case #  
92-03120

Name of Respondents

Andrew Racz  
Warren Weiss  
Robert Rosen

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**REPRESENTATION**

For Claimant: Michael Einbinder, Esq., of Rosen Einbinder & Dunn, P.C., located in New York.

For Respondent: Maya Likar, Esq., located in New York.

For Counter Respondent's: Michael Einbinder, Esq., of Rosen Einbinder & Dunn, P.C., located in New York.

**CASE INFORMATION**

Statement of Claim filed: September 15, 1992.

Claimant's Submission Agreement signed on: August 31, 1992.

Statement of Answer filed by Respondent, Andrew Racz, ("Respondent") on: November 19, 1992.

Respondent, Andrew Racz's, Submission Agreement signed on: May 7, 1993.

Statement of Counter-Claim filed: January 28, 1993.

Statement of Answer to Counter-Claim filed by Respondent, Robert Rosen on: April 29, 1993.

Statement of Answer to Counter-Claim filed by Respondent, Warren Weiss on: May 10, 1993.

### **HEARING INFORMATION**

Pre-Hearing Conference: October 20, 1993 / 1 Session

Hearing Dates/Sessions: February 3, 1994 / 2 Sessions  
February 4, 1994 / 2 Sessions  
March 3, 1994 / 2 Sessions  
March 18, 1994 / 2 Sessions  
March 22, 1994 / 2 Sessions

Hearing Location: NASD offices located in New York, New York.

### **CASE SUMMARY**

Claimant, Bishop Rosen Co., ("Rosen") alleged that Respondent, an employee of Claimant is liable for \$50,000. This amount allegedly represented costs incurred by Rosen for paying an income execution in connection with a divorce proceeding between Racz and his former wife. Claimant argues Respondent agreed to reimburse them in connection with such income execution plus any costs including attorney's fees.

Claimant further alleges Respondent is liable for \$20,000 which was lent to Respondent based upon a written agreement that Racz would repay this amount upon termination. Racz was terminated on September 30, 1991.

Respondent admitted being employed by Rosen, but denied every other allegation in Rosen's claim.

Respondent filed a Counter-Claim alleging that Rosen had promised to pay him an override commission of twenty percent. He argued that Rosen paid him the commission amounting to \$14,000, then demanded the check back. Racz returned this check and then never received the commission he was promised. Racz further alleged that Rosen was contractually obligated to pay him \$100,000 in override commissions which was never received.

### **RELIEF REQUESTED**

Claimant requested \$50,000 which was incurred in paying the income execution plus attorney's fees. Claimant also requested damages of \$20,000 plus interest which represented the amount of the loan made to Respondent.

Respondent requested \$100,000 in override commissions.

### OTHER ISSUES

Rosen asserted a Motion To Dismiss Weiss during the hearings. This motion was granted and Warren Weiss was dismissed from the case on March 3, 1994.

### AWARD

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

- 1) Respondent, Racz, is liable to Claimant, and shall pay the amount of \$20,000 on the promissory note without interest.
- 2) Respondent, Racz, is hereby liable to the Claimant and shall pay the amount of \$20,000 in reimbursement of the sum claimant paid to Ellen Racz without interest.
- 3) Respondent, Racz, is liable and shall pay to Claimant the amount of \$8,000 in attorney's fees. Attorney's fees pursuant to an agreement reached at the meeting on July 10, 1991.
- 4) Claimant, Bishop Rosen, is liable and shall pay to Racz the amount of \$4,770, without interest. This amount represents Racz's share of Spectrum Diagnostic stock. All of Racz's rights and interest in the aforementioned stock are hereby extinguished.
- 5) All other claims and counter claims are hereby denied.

### FORUM FEES

Pursuant to Section 44(c) of the *Code of Arbitration Procedure*, the following Forum Fee(s) are assessed.

\$500 Non-Refundable Filing Fee  
\$500 Non-Refundable Filing Fee for Counter-Claim  
\$500 Non-Refundable Filing Fee for Third Party Claim  
\$300 Pre-Hearing Conference (October 20, 1993)  
\$6,000 Hearing Session Fees (10 sessions x \$600.00)  
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\$7,800

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- 1) One-third of the Total Forum Fees in the amount of \$2,600 are assessed against Claimant Bishop Rosen.
- 2) Two-thirds of the Total Forum Fees in the amount of \$5,200 are assessed against Respondent Racz.

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

**ARBITRATION PANEL**

Richard Apicella, Esq.	-	Industry Chairperson
John B. Ryan	-	Industry Panelist
Clifford A. Harwick	-	Industry Panelist

Concurring Arbitrator's Signature

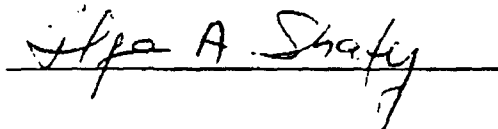
  
Richard Apicella, Esq.

Date of Decision: May 12, 1994

STATE OF  
COUNTY OF

s.s.:

On this 3<sup>rd</sup> day of May, 1994, before me personally appeared Richard Apicella 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.



ILGA A. SHAFY  
NOTARY PUBLIC, State of New York  
No. 4797524  
Qualified in Nassau County  
Commission Expires ~~March 31, 1995~~ 12/31/95

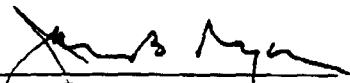
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ARBITRATION PANEL

Richard Apicella, Esq.	-	Industry Chairperson
John B. Ryan	-	Industry Panelist
Clifford A. Harwick	-	Industry Panelist

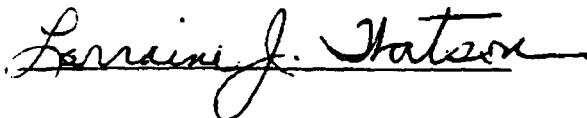
Concurring Arbitrator's Signature

  
John B. Ryan

Date of Decision: May 12, 1994

STATE OF ND S.S.:  
COUNTY OF Monmouth

On this 6 day of May, 1994, before me personally appeared John B. Ryan known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



LORRAINE J. WATSON  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Aug. 16, 1997

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

**ARBITRATION PANEL**

Richard Apicella, Esq.	-	Industry Chairperson
John B. Ryan	-	Industry Panelist
Clifford A. Harwick	-	Industry Panelist


Concurring Arbitrator's Signature

  
Clifford A. Harwick

Date of Decision: May 12, 1994

STATE OF New Jersey s.s.:  
COUNTY OF Hunterdon

On this 12th day of May, 1994, before me personally appeared Clifford A. Harwick 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.

  
DAVID W. WALLACE  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Jan. 22, 1997