

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Penrod & Company

92-04248

Name of Respondent

Gregory V. Sullivan

REPRESENTATION

For Claimant: Penrod & Company was represented by Reggie C. Griffin, Esq. of Morrison & Heckler, located in Kansas City, Missouri.

For Respondent: Gregory V. Sullivan was represented by Jeff Jamieson, Esq. of A.G. Edwards & Sons, Inc. St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed: December 23, 1992.

Claimant's Submission Agreement signed on: November 11, 1992.

Statement of Answer filed by Respondent, Gregory V. Sullivan, on: February 9, 1993.

Respondent Gregory V. Sullivan's Submission Agreement signed on: February 2, 1993.

Claimant's Motion to Amend Statement of Claim was filed: June 4, 1993.

Claimant's Second Motion to Amend Statement of Claim filed: August 2, 1993.

N.A.S.D. Arbitration No. 92-04248
Award Page 2 of 5

HEARING INFORMATION

Pre-Hearing Conference: None Held.
Hearing Dates/Sessions: July 20, 1993 for One (1) session;
September 23, 1993 for Three (3) sessions;
September 24, 1993 for Three (3) sessions.

Hearing Location: Springfield, Missouri.

CASE SUMMARY

Claimant, Penrod & Company ("Penrod") alleged breach of contract and wrongful solicitation on the part of Respondent, Gregory V. Sullivan ("Sullivan"), formerly a registered representative of Penrod.

According to Penrod, at the time Sullivan entered employment with Penrod, he signed a Penrod & Company Representative Agreement ("Agreement"). Penrod claimed that Sullivan breached the Agreement's non-competition provision by entering into the employment of A.G. Edwards & Sons, Inc. and by competing within a thirty-five mile radius of Penrod's offices. Penrod further alleged that Sullivan breached the Agreement by directly soliciting Penrod's previous and existing customers. Penrod maintained that while Sullivan was still employed by Penrod, he used Penrod's office and equipment in planning to depart and in his wrongful solicitation of Penrod's clients. Lastly, Penrod asserted that Sullivan contacted other registered representatives of Penrod and attempted to create dissatisfaction in Penrod's offices and that Sullivan falsely told some of Penrod's clients that Penrod's offices in West Plains, Missouri, will be closing.

In his Statement of Answer, Respondent Sullivan denied the allegations contained in the Statement of Claim. Sullivan alleged that the A.G. Edwards & Sons, Inc. office that he is currently employed at is not within the thirty-five mile radius of any Penrod offices. In addition, Sullivan claimed that the Agreement does not prohibit solicitation of any customers within the thirty-five mile radius of Penrod's offices, nor does the Agreement prohibit solicitation of Penrod's previous and existing customers. Sullivan asserted the defenses of waiver, estoppel and that the Statement of Claim failed to state of claim against Sullivan upon which relief can be granted.

RELIEF REQUESTED

Claimant Penrod requested entry of an award against Respondent Gregory V. Sullivan in the minimum amount of \$54,230.00; punitive damages in an amount to be assessed by the Panel; all forum fees and all costs of the arbitration to be assessed against Respondent Sullivan;

N.A.S.D. Arbitration No. 92-04248

Award Page 3 of 5

attorneys' fees in the sum of \$48,208.62; and an order enjoining Gregory V. Sullivan from competing with Claimant.

Respondent Sullivan requested that Claimant's claim for injunctive relief and monetary award be denied. Further, Respondent Gregory V. Sullivan requested that he be awarded all costs and expenses associated with defending this action.

OTHER ISSUES CONSIDERED & DECIDED

After review of the the Motion to Amend the Statement of Claim filed on June 4, 1993 and all responses, the Panel determined that the Motion would be denied.

After hearing arguments, the Motion to Amend the Statement of Claim filed August 2, 1993 was granted by the Panel at the hearing on September 23, 1993.

The Panel made specific findings with respect to the Form U-5, Uniform Notice for Securities Industry Registration, for Gregory V. Sullivan dated August 30, 1993 ("Sullivan Amended Form U-5").

1. Respondent Sullivan did not accept a job with, nor was he employed by, A. G. Edwards & Sons, Inc. prior to the cessation of his employment with Pennrod & Company;
2. Respondent Sullivan did not engage in any private securities transactions on behalf of, or involving, A. G. Edwards & Sons, Inc. prior to the cessation of his employment with Pennrod & Company; and
3. Respondent Sullivan did not steal company records, nor is he "guilty of...theft of company records..." as alleged by Pennrod & Company in the Sullivan Amended Form U-5.

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 deter-

N.A.S.D. Arbitration No. 92-04248

Award Page 4 of 5

mination as follows:

1. Claimant Penrod & Company's request for an order enjoining Respondent Gregory V. Sullivan from soliciting current or prospective customers residing within a thirty-five mile radius of any of Penrod & Company offices existing as of September, 1992 is denied;
2. The Panel orders that Respondent Gregory V. Sullivan shall not accept employment with any broker-dealer which has an office geographically located within a thirty-five mile radius of any Penrod & Company office existing as of September, 1992, for a period of three (3) years pursuant to the terms of the agreement;
3. Claimant Penrod & Company's request for actual or liquidated damages and punitive damages is denied;
4. The Panel hereby orders that Claimant Penrod & Company shall file an amended Form U-5 for Respondent Gregory V. Sullivan to replace the amended U-5 dated August 30, 1993, by stating as Reason for Termination "Voluntary"; changing the language of Paragraph 8.c. of the Disclosure Reporting Page (DRP-5) to read "Gregory V. Sullivan found not to have engaged in any of the conduct alleged in Paragraph 7 of all prior Form U-5s filed by Penrod and Company against Sullivan by an NASD arbitration panel in NASD Arbitration No. 92-04248"; and removing all language from Paragraph 9 and leaving Section blank pursuant to the Panel's specific findings listed above. The Amended Form U-5 shall be filed within 10 business days of receipt of this award. Failure to file the Amended Form U-5 within the time shall result in referral to the local business conduct committee of the NASD;
5. Each party shall bear its own costs of arbitration, including attorney's fees, except for those specifically enumerated herein.

OTHER COSTS

Pursuant to the agreement of the parties, the travel expenses of the arbitrators incurred in traveling to Springfield, Missouri shall be divided equally between the parties.

N.A.S.D. Arbitration No. 92-04248
Award Page 5 of 5

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Seven (7) Hearing sessions X \$600.00 per hearing session = \$4,200.00.

The National Association of Securities Dealers, Inc. shall retain the nonrefundable filing fee of \$500.00 and the \$600.00 hearing session deposit paid by Claimant Penrod & Company. Respondent Gregory V. Sullivan liable for and shall pay to the NASD forum fees in the sum of \$3,600.00.

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

Concurring Arbitrators' Signatures

Name

Date

Peter Joseph O'Neal
Industry Arbitrator
Chairperson

Glenda S. Bone
Glenda S. Bone
Industry Arbitrator

11-30-93

J. Bret Armatus, Esq.
Industry Arbitrator

For NASD Use Only
Date of Service of Award:

12-2-93

N.A.S.D. Arbitration No. 92-04248

Award Page 3 of 5

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Seven (7) Hearing sessions X \$600.00 per hearing session = \$4,200.00.

The National Association of Securities Dealers, Inc. shall retain the nonrefundable filing fee of \$500.00 and the \$600.00 hearing session deposit paid by Claimant Perrod & Company. Respondent Gregory V. Sullivan is liable for and shall pay to the NASD forum fees in the sum of \$3,600.00.

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


Concurring Arbitrators' Signatures

Name

Date

Peter Joseph O'Neal
Industry Arbitrator
Chairperson

Glenn E. Bone
Industry Arbitrator


J. Peter Armas, Esq.
Industry Arbitrator

11/29/93

For NASD Use Only

Date of Service of Award: 12-2-93

N.A.S.D. Arbitration No. 92-04248
Award Page 5 of 5

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Seven (7) Hearing sessions X \$600.00 per hearing session = \$4,200.00.


The National Association of Securities Dealers, Inc. shall retain the nonrefundable filing fee of \$500.00 and the \$600.00 hearing session deposit paid by Claimant Petrod & Company. Respondent Gregory V. Sullivan is liable for and shall pay to the NASD forum fees in the sum of \$3,600.00.

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

Concurring Arbitrators' Signatures

Name

Date


Peter Joseph O'Neal
Industry Arbitrator
Chairperson

11-29-93

Glenda S. Bone
Industry Arbitrator

J. Bret Armstrong, Esq.
Industry Arbitrator

For NASD Use Only
Date of Service of Award: 12-2-93