

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Steven E. Vest

93-00231

Name of Respondents

Dominick & Dominick Incorporated
Portfolio Management Services, Inc.
Alan D. Bush

REPRESENTATION

For Claimant, Steven E. Vest ("Vest"): Robert Wayne Pearce, Esq. of Lerner & Pearce, P.A.

For Respondents, Dominick & Dominick Incorporated ("Dominick"); Portfolio Management Services, Inc. ("PMSI") and Alan D. Bush ("Bush"): James George Esq. and Norman A. Fleisher, Esq. of Ruden, Barnett, McClosky, Smith, Schuster & Russell, P.A.

CASE INFORMATION

Statement of Claim filed: 1/21/93.

Claimant's Submission Agreement signed: 1/18/93.

Statement of Joint Answer filed by Respondents: 3/22/93.

Respondents, Dominick, PMSI, and Bush's, Submission Agreements signed: 4/6/93 by Alan D. Bush individually and in his representative capacity as president of the respondent corporations.

HEARING INFORMATION

On January 19 and 20, 1994 Hearings lasting for five (5) sessions were held in Fort Lauderdale, Florida.

CASE SUMMARY

Claimant alleged that he became a representative of Dominick, PMSI, and Bush for the purpose of wholesaling a wrap-fee account program; that he marketed the program for over two and one half years and established a relationship between Cigna Securities, Inc., and the Respondents; that he was not fully compensated for his efforts and instituted this proceeding against Respondents for breach of contract; promissory estoppel; specific performance; unjust enrichment; quantum meruit; and an accounting.

Respondents denied all allegations of wrongdoing and alleged that Claimant is not entitled to commissions after being removed from all contact with Cigna at Cigna's request; that Claimant is not entitled to collect commissions after his employment with Dominick terminated; that NYSE Rule 353(b) prohibits such continuing compensation; that Claimant did not perform the services for which he was employed; that Claimant was an at-will employee who could be terminated at any time without cause; that Claimant was not entitled to equitable relief in the form of quantum meruit, unjust enrichment or promissory estoppel because he alleged the existence of an express contract; that specific performance can not be used to enforce the terms of employment contracts; that Claimant is entitled to no relief against Bush individually because Bush acted at all times in his representative capacity as an employee and agent of Dominick and PMSI; and that Cigna's relationship with Dominick ended July 31, 1993 precluding any recovery beyond that date.

RELIEF REQUESTED

Claimant requested compensatory damages, lost profits, prejudgment interest and costs, an order of accounting and specific performance.

Respondents requested dismissal of all claims and recovery of attorneys fees and costs incurred.

OTHER ISSUES CONSIDERED & DECIDED

1. Dominick's ore tenus motion to preclude recovery against it for events occurring after July 31, 1993 is granted.
2. At the close of the Claimant's case, the Respondents moved for dismissal of all claims. The motion was granted as to Bush only, on counts I and V of the claim. Ruling on the motion was deferred as to all other counts and all other Respondents.
3. The parties have agreed that the Award in this matter may be executed in

counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) 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. Respondent Bush is found not liable and, therefore, all claims against him are hereby dismissed.
2. Respondents, Dominick and PMSI, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$12,022.00 plus interest at the legal rate of twelve (12) percent (%) per annum in the amount of \$1,442.64 for a total due the claimant of \$13,464.64.
3. Respondents' requests for attorneys fees and costs are denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, *excepting forum fees below.*

FORUM FEES

1. Pursuant to Section 44(c) of the Code of Arbitration Procedure, the panel has assessed Forum Fees for five (5) sessions at One Thousand dollars (\$1,000) per session for a total amount of \$5,000.00 as follows:
2. Respondents, Dominick and PMSI are hereby assessed \$5,000.00 jointly and severally \$1,000 of which shall be payable directly to Claimant and \$4,000 which shall be paid to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the \$500.00 non refundable session deposit paid by Claimant.

Concurring Arbitrators' Signatures

Name

Public/Industry

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Industry Arbitrator

Howard A. Tescher, Esq.

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Industry Arbitrator

Seymour Roberts

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Industry Arbitrator

Robert P. Root

Date of Decision: 3/4/94