

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Printon, Kane Group, Inc.

vs.

Award  
#93-00239

Name of Respondents

John H. Hale  
William M. Sapoch  
Joseph F. Mannello

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REPRESENTATION

For Claimant, Printon, Kane Group, Inc. ("Claimant"): Bernard C. Daley, Esq. of the law offices of Joseph C. Daley located in New York City, New York.

For Respondents, John H. Hale, William M. Sapoch and Joseph F. Mannello, ("Respondents"): Christopher J. Christie, Esq. of the law firm of Dughi and Hewit located in Cranford, New Jersey and Richard P. Ryder, Esq. in private practice, located in Maplewood, New Jersey.

CASE INFORMATION

Statement of Claim filed: January 20, 1993.

Claimant's Submission Agreement signed by Thomas F. Kane, Jr., Vice President of Printon, Kane Group, Inc. on: December 4, 1992.

Statement of Answer filed by Respondents on: May 3, 1993.

Respondents' Submission Agreement signed on: May 3, 1993.

### HEARING INFORMATION

Hearing Dates/Sessions:	April 5, 1994	-	Two sessions
	March 28, 1994	-	Two sessions
	March 16, 1994	-	Two sessions
	March 2, 1994	-	Two sessions
	February 15, 1994	-	Two sessions
	January 11, 1994	-	Two sessions
	December 13, 1993	-	Two sessions
	November 30, 1993	-	Two sessions
	November 29, 1993	-	Two sessions

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

### CASE SUMMARY

Claimant alleged that the Respondents, while still employees of Printon, Kane Group, Inc. ("PKGI"), formed a competing broker-dealer entity in February 1992. Respondent Hale was employed from November 20, 1985 through May 29, 1992 as PKGI's head corporate bond trader, the head of its high-grade corporate securities department and a member of its Executive Committee. Respondent Sapoch was employed from January 28, 1985 through August 19, 1992 as a U.S. government securities trader and salesman, in addition to being a member of the Executive Committee. Respondent Mannello was employed from January 1, 1984 through January 14, 1992 as PKGI's head corporate bond trader, the head of its corporate securities department and its President. In addition, Respondent Mannello had responsibility for hiring, training, managing and compensating the corporate securities trading and sales staffs. All Respondents were registered with the NASD as a general securities principals.

Claimant alleged that as early as January 1992, Respondent Hale met with the other Respondents, including other employees of PKGI, to discuss starting a rival firm. In February 1992, Respondent Mannello formed the competing entity. Claimant maintained that in March 1992, Respondents met to discuss funding and staffing the new entity, and by April 1992, they had decided on their respective roles and ownership shares in the new organization.

Claimant contended that none of the Respondents would admit to forming the new entity, nor to leaving PKGI's employ. When asked by the Claimant if he planned to leave PKGI, Respondent Sapoch, on both April 28, 1992 and again on May 1, 1992 (concerning a mortgage application request), replied in the negative. Again, on June 16, 1992 (regarding a \$60,000 advance request), Respondent Sapoch indicated his intention of continuing employment at PKGI.

During the months preceding their departure from PKGI, Claimant alleged that Respondents declined to interview persons for new positions in their respective departments, nor to prepare the departments for the imminent departures of both key employees known to them, as well, as their own. In addition, Claimant alleged that Respondent Sapoch distributed higher commissions to subordinates who would go with him to the new entity. Finally, Claimants alleged that during this period and in connection with the aforementioned activities, PKGI continued to compensate the Respondents believing that they were loyal employees acting in the best interest of PKGI.

Respondents counterclaimed that the Claimant breached its contractual obligations owed them. On or around January 1992, Respondent Hale maintained that he entered into an agreement with PKGI and the Printon Kane Holding, Limited Partnership ("PKHLP"), whereby Respondent Hale's primary compensation would be derived from a bonus pool of 60 percent of the net profits generated by the corporate bond department, of which he was the operating head. Moreover, about this same time, Respondent Hale was assigned as salesman of the Penn Mutual Insurance Company account and was to be paid 30 percent of the gross revenues generated. During the period from January through May 1992, Respondent Hale alleged that he generated revenues in the amount of \$55,537 from this account, but did not receive any commissions due him. Furthermore, when he resigned from PKGI on May 29, 1992, Respondent Hale alleged he was owed monies under the 1992 Bonus Plan for the months of April and May. As a result of non-payment of the bonus when due, Respondent Hale contended that he would be subject to an additional 15 percent tax on the income because of changes in federal tax laws.

Respondent Sapoch denied ever being a general securities principal of PKGI. In or around February 1992, Respondent Sapoch contended that he renewed his agreement with PKGI to be compensated at a 40 percent commission rate as a U.S. Government Securities salesperson. Respondent Sapoch maintained that this contract was agreed to only after prolonged negotiations during which he offered to resign not only from the Executive Committee (a position he contended was never sought), but also from PKGI. In addition, Respondent Sapoch alleged that he earned commissions for the periods from December 1, 1991 to June 1, 1992 and from June 1, 1992 to August 19, 1992, in the amounts of \$90,000 and \$195,857, respectively, which are still due and owed him. Furthermore, Respondent Sapoch contended that the \$185,000, which PKGI termed "advances," was paid him as compensation from which no withholding taxes were taken. In addition, Respondent Sapoch alleged that Claimant still owed him \$100,857 in past due commissions of which he would incur an additional 15 percent in taxes.

Respondent Mannello, who was PKGI's President and head of its corporate bond department, was also a general partner of PKHLP. Respondent Mannello alleged that in or around March 1988 he entered into a contract whereby his partnership interest in PKHLP would be reduced to a nominal 0.1 percent in return for a compensation package whereby he would receive a 40 percent pay-out on his gross revenue production. Respondent Mannello, who resigned from PKGI and withdrew from the partnership on January 4, 1992, alleged he was owed commissions

for the years 1988 through and including 1990 in the amount of \$991,161. During this period, Respondent Mannello contended that Claimant misrepresented to him that it had cash flow problems and that as soon as certain deals were completed, the Respondent would be paid the monies owed him. Moreover, Respondent Mannello alleged that following the departure of virtually the entire municipal bond department in December 1989, Respondent rebuilt PKGI and reduced the firm's accumulated debt. As a result of his efforts, Respondent Mannello contended that he entered into a contract with PKGI's senior management to exchange his 40 percent commission rate for a base salary of \$178,000 commencing in 1991, plus the residual portion of a bonus pool consisting of 60 percent of the corporate bond department's net profits for 1991. Furthermore, Respondent Mannello alleged he was entitled to a 1991 incentive bonus of \$728,848 of which he was not paid. Moreover, since Respondent Mannello's total unpaid compensation claim amounted to \$1,720,000, said Respondent alleged he would be subject to an additional 15 percent federal tax liability in the amount of \$258,001.

In conclusion, Respondents denied Claimant's allegations of unfair competition practices and breach of fiduciary duty owed an employer, and alleged that Claimant unjustly forfeited compensation due and owed them.

#### **RELIEF REQUESTED**

Claimant requested awards against Respondents as follows:

1. Against Respondent Hale, the amount of \$142,884.59, plus interest from the date each payment was made to the Respondent;
2. Against Respondent Sapoch, the amount of \$372,896.02, plus interest from the date each payment was made to the Respondent;
3. Against Respondent Mannello, the amount of \$13,686.16, plus interest from the date each payment was made to the Respondent; and
4. Against all Respondents, reasonable attorney's fees and disbursements.

Respondents requested that the arbitration panel find in their favor and dismiss all claims in their entirety. Respondents requested that the panel enter awards against the Claimant as follows:

1. \$230,899, representing Respondent Hale's first quarter bonus of \$214,238 and unpaid commissions of \$16,661 earned in 1992;
2. An amount to be determined, representing Respondent Hale's second quarter bonus for 1992;

3. A 15 percent surtax on the amounts awarded in subparagraphs 1 and 2 above, to compensate Respondent Hale for the additional tax liabilities;
4. \$100,857, representing Respondent Sapoch's unpaid commissions earned in 1992, or \$285,857 depending on the panel's characterization of the \$185,000 "advance" as a loan or as income;
5. \$42,878.55, representing a 15 percent surtax on \$285,857 to compensate Respondent Sapoch for the additional tax liabilities;
6. \$1,720,009, representing Respondent Mannello's unpaid commissions earned during 1988 through and including 1990 and unpaid incentive compensation for 1991, in the amounts of \$991,161 and \$728,848, respectively;
7. \$258,001, representing a 15 percent surtax on the amounts as outlined in subparagraph 6 to compensate Respondent Mannello for the additional tax liabilities;
8. Interest on the aforementioned sums owed to all of the Respondents; and
9. Attorney's fees, costs and legal expenses incurred by the Respondents in connection with this arbitration proceeding in addition to forum fees, travel expenses, expert witness fees, etc.

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

On January 20, 1993, PKGI and PKHLP executed releases in favor of Respondents Mary Patricia Christie and Thomas Roberti in resolution of all claims between and among those parties, and in turn, these Respondents executed releases in favor of PKGI and PKHLP, and all of their officers and agents. In addition, the defamation claims by Respondents against third-party Respondents, Thomas F. Kane, Sr. and Thomas F. Kane, Jr., were withdrawn as of November 16, 1993,

#### **AWARD**

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

1. Respondent Mannello's counterclaim against Claimant is granted and Claimant is hereby liable and shall pay Respondent Mannello the amount of \$1,357,324, all of which shall be deemed compensation due and owing by the Claimant, plus prejudgment interest in the

aggregate amount of \$285,038 through June 15, 1994, plus \$334.68 per day from June 16, 1994 to the date of payment.

2. Claimants' claims against Respondents are denied in their entirety.
3. All amounts paid by Claimant to Respondent Sapoch in 1992 are deemed to have been on account of compensation.
4. Respondents Hale and Sapoch's counterclaims against Claimant are denied in their entirety.

#### **FORUM FEES**

Pursuant to Section 44c of the *Code of Arbitration Procedure*, the following Forum Fees are assessed against Claimant.

18 sessions X \$1,000 = \$18,000 minus hearing session deposit of \$1,000.00 = net \$17,000.00 due.

Claimant is further assessed a \$500.00 non-refundable filing fee.

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

ARBITRATION PANEL

Erik D. Aschenbrenner, Esq.	-	Industry Chairperson
David W. Haynes	-	Industry Panelist
Aegis T. Frumento, Esq.	-	Industry Panelist

Arbitrator's Signature

Erik D. Aschenbrenner  
Erik D. Aschenbrenner, Esq.

Date of Decision: June 29, 1994

STATE OF NEW YORK S.S.:  
COUNTY OF NEW YORK

On this 8 day of ~~June~~ <sup>July</sup>, 1994, before me personally appeared Erik D. Aschenbrenner, 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.

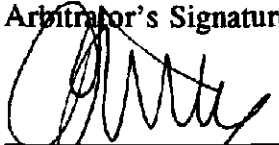
Margaret C. Springmann

MARGARET C. SPRINGMANN  
Notary Public, State of New York  
No. 01SP4697068  
Qualified in Richmond County  
Certificat " " rk County  
Commission Expires Oct. 31, 92

ARBITRATION PANEL

Erik D. Aschenbrenner, Esq.	-	Industry Chairperson
David W. Haynes	-	Industry Panelist
Aegis T. Frumento, Esq.	-	Industry Panelist

Arbitrator's Signature

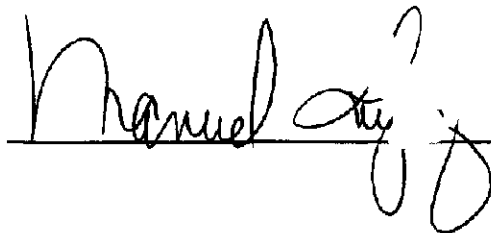
  
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Aegis T. Frumento, Esq.

Date of Decision: June 29, 1994

STATE OF  
COUNTY OF

S.S.:

On this 29th day of June, 1994, before me personally appeared Aegis T. Frumento, 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.

  
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MANUEL LOPEZ  
Notary Public, State of New York  
No. 31-2401860  
Qualified in New York County  
Commission Expires

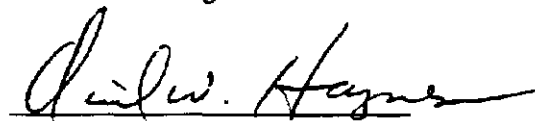
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ARBITRATION PANEL

Erik D. Aschenbrenner, Esq.	-	Industry Chairperson
David W. Haynes	-	Industry Panelist
Aegis T. Frumento, Esq.	-	Industry Panelist

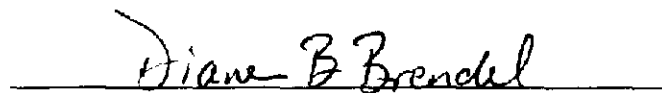
Arbitrator's Signature

  
David W. Haynes

Date of Decision: June 29, 1994

STATE OF New York s.s.:  
COUNTY OF New York

On this 27<sup>th</sup> day of June, 1994, before me personally appeared David W. Haynes, 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.



DIANE B. BRENDEL  
Notary Public, State of New York  
No. 60-4722557 Qual. in Westchester Co.  
Cert. filed in New York County  
Commission Expires February 28, 1995