

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Douglas Black

vs.

Case

#93-00334

Name of Respondent

Jeffrey Brooks Securities Inc.

REPRESENTATION

For Claimant, Douglas Black ("Claimant"), Neil R. Cahn Esq. from the law firm of Newman, Douglas B. & Cahn, located in Carle Place, New York.

For Respondent, Jeffrey Brooks Securities, Inc. ("Respondent"), Barry A. Bohrer, Esq. from the law firm of Morvillo, Abramowitz, Grand, et al. located in New York, New York.

CASE INFORMATION

Statement of Claim was filed on February 1, 1993.

Claimant's Submission Agreement was signed on January 22, 1993.

Claimant submitted a reply to Respondent's counterclaim on April 5, 1993.

Statement of Answer with Counterclaim was filed by Respondent on March 22, 1993.

Respondent's Submission Agreement was signed on March 23, 1993.

HEARING INFORMATION

Pre-Hearing Conference: August 16, 1993.

**Hearing Dates/Sessions: July 19, 1994 - 2 sessions
July 27, 1994 - 1 session**

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

CASE SUMMARY

Claimant alleges that he is a former employee of the Respondent and that Respondent owes Claimant \$48,817.50 in commissions and compensation. Specifically, Claimant alleges that he is owed \$21,000.00 in commissions in connection with the sale of 25 units in an offering of U.S. Alcohol Testing of America, Inc.; \$26,000.00 commission for the sale of 28 units in an offering of U.S. Alcohol and Drug Testing International, N.V.; \$1,390.50 commission for miscellaneous sales in October, 1992 and \$427.00 in commission for miscellaneous sales in November, 1992.

Respondent denies any liability to Claimant for the amount sought. Respondent alleges two claims against Respondent, each of which arose from Claimant's actions during the course of Claimant's employment with the Respondent. As to those actions, Respondent alleges that Claimant is liable for one half of the expenses incurred by or judgments rendered against the Respondent.

Respondent further counterclaims on the grounds that as to the claim herein, Claimant was an independent contractor and not a salaried employee. Additionally Respondent alleges that any agreement between Respondent and Claimant regarding payments was based on the understanding that: 1) Claimant would receive no commissions for sales on his own account or sales to members of Claimant's family; and 2) Claimant would receive 50 percent of the total commission and mark-up excluding sales to family members and reductions for Respondent's expenses incurred in connection with claims arising from Claimant's actions during employment with Respondent.

As to the Respondent's counterclaim, Claimant denies the allegations therein and interposed two affirmative defenses: 1) that any agreement to which Respondent seeks to hold Claimant responsible is in violation of the statute of frauds; and 2) that the Claimant is not responsible for any expenses incurred by Respondent in connection with any transaction beyond the compensation earned by Claimant relative to such transaction.

RELIEF REQUESTED

Claimant request \$48,817.50 together with interest, costs and expenses of the arbitration proceeding, reasonable attorney's fees and such other relief as the arbitrators deem appropriate.

Respondent requests judgment and award against Claimant in an amount to be determined upon conclusion of the Statement of Claim referred to in paragraph 6 of the Answer. Respondent also requests interest, costs and expenses of this proceeding, reasonable attorney's fees and such other relief as the arbitrators deem appropriate.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies and have agreed to receive conformed copies of the Award while the original remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions filed on September 6, 1994 by Claimant, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent is hereby liable to Claimant and shall pay Claimant an award of **ONE THOUSAND EIGHT HUNDRED SEVENTEEN DOLLARS AND FIFTY CENTS (\$1,817.50)**.
- 2) Respondent shall pay Claimant interest in the amount of **THREE HUNDRED TWENTY SEVEN DOLLARS AND FIFTEEN CENTS (\$327.15)**.
- 3) **The claim for attorney's fees is denied.**
- 4) **The claim for costs and expenses is denied.**
- 5) **All other claims and Counterclaim for relief are denied.**

FORUM FEES

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

Non-refundable Filing Fee - \$500.00
Non-refundable Counterclaim Fee - \$500.00
Hearing Sessions Fee - \$1,800.00 (3 session x \$600)
Pre-hearing Session Fee - \$300.00
Total Fees = \$3,100.00

- 1) Claimant is assessed a non-refundable filing fee of \$500.00. Claimant previously paid \$1,100.00 and is due a refund in the amount of \$600.00.
- 2) Respondent is assessed a non-refundable counterclaim filing fee in the amount of \$500.00. Respondent is further assessed forum fees in the amount of \$2,100.00. Respondent previously paid \$250.00 and owes a total amount of \$1,750.00.

- 3) Respondent shall satisfy the fees assessed by reimbursing Claimant \$600.00 and by remitting the balance, \$1,150.00 to the NASD.

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

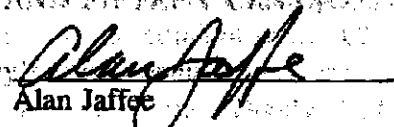
ARBITRATION PANEL

John A. Borgese, Esq. - Industry Chairperson

Irving Gindick - Industry Panelist

Alan Jaffee - Industry Panelist

Concurring Arbitrator's Signature


Alan Jaffee

Executed on:

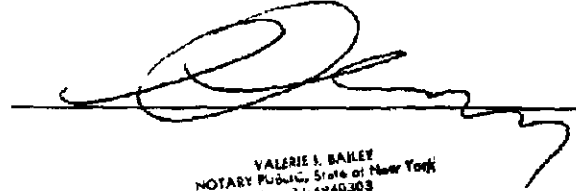
Date of Decision

11/1/94

Date of Decision: November 15, 1994

STATE OF New York S.S.:
COUNTY OF New York

On this 14th day of November, 1994, before me personally appeared Alan Jaffee 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.



VALERIE I. BAILEY
NOTARY PUBLIC, State of New York
No. 24-4946303
Queens County
July 18, 1996

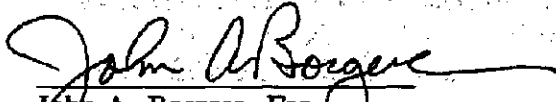
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Fees are payable to the National Association of Securities Dealers, Inc.

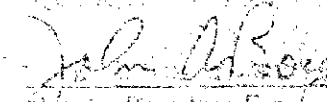
ARBITRATION PANEL

John A. Borgese, Esq.	-	Industry Chairperson
Irving Gindick	-	Industry Panelist
Alan Jaffee	-	Industry Panelist

Concurring Arbitrator's Signature


John A. Borgese, Esq.

Concurring Arbitrator's Signature

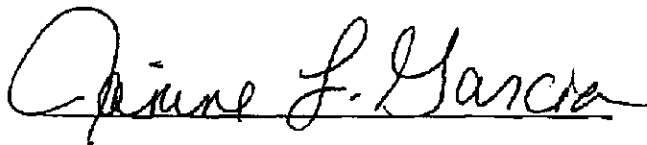

John A. Borgese, Esq.

Date of Decision: November 15, 1994

STATE OF
COUNTY OF

S.S.:

On this 7th day of November, 1994, before me personally appeared John A. Borgese 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.



JANINE L. GARCIA
Notary Public, State of New Jersey
No. 215419
Qualified in Hudson County
Commission Expires October 25, 1998

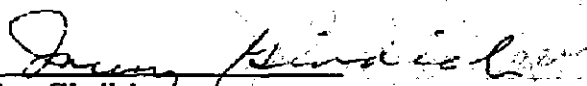
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Fees are payable to the National Association of Securities Dealers, Inc.

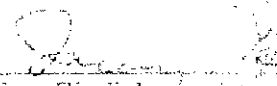
ARBITRATION PANEL

John A. Borgese, Esq.	-	Industry Chairperson
Irving Gindick	-	Industry Panelist
Alan Jaffee	-	Industry Panelist

Concurring Arbitrator's Signature


Irving Gindick

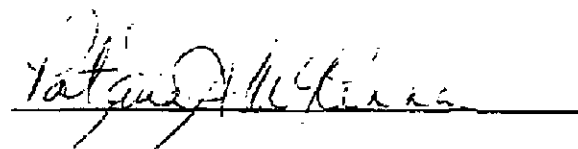
Concurring Arbitrator's


Irving Gindick

Date of Decision: November 15, 1994

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

On this 28 day of October, 1994, before me personally appeared Irving Gindick 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.



PATRICIA A. MCKENNA
Notary Public, State of New York
No. 5000355
Qualified in Westchester County
Commission Expires August 10, 1996