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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John R. Pepe

93-00516

Name of Respondents

Emanuel & Company
Eric D. Emanuel

REPRESENTATION

For Claimant John R. Pepe ("Claimant") appeared Stafford W. Thompson, Esq., a sole practitioner located in Red Bank, New Jersey.

For Respondent Emanuel & Company and Respondent Eric D. Emanuel (collectively referred to as "Respondents") appeared Mark J. Astarita, Esq., from the law firm of Gusrae, Kaplan & Bruno located in New York, New York.

CASE INFORMATION

Statement of Claim filed: February 9, 1993.

Claimant's Submission Agreement signed on: February 5, 1993.

Joint Statement of Answer and Counterclaim filed by Respondents on: March 27, 1993.

Respondent Emanuel & Company's Submission Agreement signed on: March 25, 1993.

Respondent Eric D. Emanuel's Submission Agreement signed on: March 25, 1993.

Answer to the Counterclaim filed by Claimant on: April 7, 1993.

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HEARING INFORMATION

| | | | |
|-------------------------|-------------------|---|--------------|
| Hearing Dates/Sessions: | August 23, 1994 | - | Two Sessions |
| | August 24, 1994 | - | Two Sessions |
| | November 10, 1994 | - | Two Sessions |

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that, on or about September 30, 1989, he was hired by Respondent Eric Emanuel to head Respondent Emanuel and Company's High Yield Corporate Bond Brokerage Department. Claimant further alleged that on or about February 16, 1990, Respondent Eric Emanuel wrongfully terminated his employment and falsely reported on a U-5 Form that he made unauthorized trades in house accounts exceeding position limitations and that he issued unprocessed tickets.

Claimant alleged that, as a result of this defamatory information on the U-5 Form, a hold was placed on his registration and clearance had to be obtained from the NASD. Claimant further alleged that at the time of his termination he had earned commissions of \$23,601.70, but that he was not paid. In addition, Claimant alleged that, as a result of his termination, he was unemployed for two months.

Respondents denied all allegations of wrongdoing and maintained that Claimants defamation claims were barred by the applicable statute of limitations, a qualified and an absolute privilege and the defense of truth. Respondents further maintained that, pursuant to company policy and express instructions, traders employed by Emanuel and Company were required to have a flat position at the end of the trading day and were not permitted to take a position in any bonds. Respondents maintained that contrary to company policy, Claimant took a position in certain bonds and failed to turn in his tickets for processing. Respondent maintained that this conduct violated the terms of his employment and the NASD rules and, in addition, caused damages to Respondent Emanuel and Company.

Claimant denied all allegations of wrongdoing and maintained that all of his actions were authorized by Respondent Eric Emanuel. Claimant further maintained that Respondents fail to state a claim upon which relief can be granted

RELIEF REQUESTED

Claimant requested an award of \$30,000.00, representing two months back pay, \$23,601.70, representing commissions earned and punitive damages of not less

than \$100,000.00. In addition, Claimant requested attorneys fees and interest. Claimant further requested that the Counterclaim be dismissed in its entirety.

Respondents requested that the Statement of Claim be dismissed in its entirety and that they be awarded damages in an amount to be determined by the arbitrators.

OTHER ISSUES CONSIDERED & DECIDED

Claimant advised the panel that he was withdrawing his claim based on wrongful termination.

At the hearing, the Respondents made a motion to dismiss Claimant's defamation claim based upon the applicable statute of limitations. The panel considered this motion and ruled that it be granted. In addition, the Respondents made a motion to dismiss Claimant's claim for commissions. The panel considered this motion and ruled that it be denied.

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 determination as follows:

1. All claims against Respondents be and hereby are dismissed in their entirety.
2. Claimant's request for punitive damages be and hereby is denied.
3. All claims against Claimant be and hereby are dismissed in their entirety.
4. Each party shall bear their respective costs, including attorney's fees.
5. All other claims be and hereby are denied.

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FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 filing fee previously deposited by Claimant and the \$250.00 filing fee previously deposited by Respondents and have assessed the following forum fees:

5 sessions x \$750.00 = \$3,750.00 minus hearing session deposit of \$750.00 = net \$3,000.00 due.

The arbitrators have assessed the forum fees assessed against:

1. Claimant be and hereby is liable and shall pay to the NASD the sum of \$1,500.00, representing one-half of the outstanding forum fees.
2. Respondents be and hereby are jointly and severally liable and shall pay to the NASD the sum of \$1,500.00, representing one-half of the outstanding forum fees.

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

ARBITRATORS' SIGNATURES



Eric Larson, Esq.
Industry Chairperson

Catherine Ladnier
Industry Arbitrator

James H. Conley
Industry Arbitrator

Date of Decision: May 10, 1995


9605090

STATE OF: New York

SS:

COUNTY OF: New York

On this 5th day of May, 1995, before me personally appeared Eric Larson, Esq. 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.


CHRISTINE S. ARONOW
Commissioner of Deeds
City of New York - No. 2-10106
Certificate Filed in Kings County
Commission Expires Dec. 1, 1995

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared Catherine Ladnier 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.

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared James H. Conley known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

9505090

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ARBITRATORS' SIGNATURES

Eric Larson, Esq.
Industry Chairperson



Catherine Ladnier
Industry Arbitrator

James H. Conley
Industry Arbitrator

Date of Decision: May 10, 1995

95050910

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared Eric Larson, Esq. 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.

STATE OF: NY

SS:

COUNTY OF: NY

On this 3rd day of May , 1995, before me personally appeared Catherine Ladnier 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.

Deborah A. DeJesus

DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County
Commission Expires January 24, 1996

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared James H. Conley known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

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FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 filing fee previously deposited by Claimant and the \$250.00 filing fee previously deposited by Respondents and have assessed the following forum fees:

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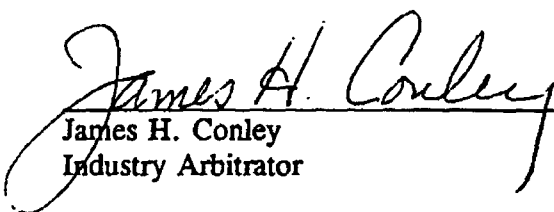
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2. Respondents be and hereby are jointly and severally liable and shall pay to the NASD the sum of \$1,500.00, representing one-half of the outstanding forum fees.

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

ARBITRATORS' SIGNATURES

Eric Larson, Esq.
Industry Chairperson

Catherine Ladnier
Industry Arbitrator



James H. Conley
Industry Arbitrator

Date of Decision: May 10, 1995

9505090

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared Eric Larson, Esq. 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.

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared Catherine Ladnier 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.

STATE OF: NEW YORK

SS:

COUNTY OF: NEW YORK

On this 8 day of MAY , 1995, before me personally appeared James H. Conley known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

Andrew Russell

ANDREW RUSSELL
Notary Public, State of New York
No. 02RU5034752
Qualified in New York County
Commission Expires Oct. 17, 1996