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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

James Burns

93-01224

Name of Respondents

Cresvale International Inc.
Michael McDermott
James Foster

REPRESENTATION

For Claimant: Robert F. Milman, Esq. of Milman & Heidecker located in Lake Success, New York.

For Respondents: Stuart J. Moskovitz, Esq. of Tanner Propp & Farber located in New York, New York.

CASE INFORMATION

Statement of Claim filed: March 19, 1993.

Claimant's Submission Agreement signed on: March 18, 1993.

Statement of Answer and Counterclaim filed by Respondents Cresvale International, Inc. ("Cresvale"), Michael McDermott ("McDermott"), and James Foster ("Foster") on: June 1, 1993.

Respondent Cresvale's Submission Agreement signed on: June 1, 1993.

Respondent McDermott's Submission Agreement signed on: December 16, 1993

Respondent Foster's Submission Agreement signed on: June 8, 1993.

Claimant's Answer to Respondents' Counterclaims filed on: June 18, 1993.

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HEARING INFORMATION

Pre-Hearing Conference: December 2, 1993 / One Session.

Hearing Dates/Sessions: December 16, 1993 / Two Sessions.
December 17, 1993 / Two Sessions.
March 15, 1994 / Two Sessions.
March 16, 1994 / Two Sessions.
May 10, 1994 / Two Sessions.
July 11, 1994 / One Session.

Hearing Location: National Association of Securities Dealers offices located at 33 Whitehall Street in New York, New York.

CASE SUMMARY

Claimant alleged that on or about October 1, 1990 Cresvale and Claimant entered into an Employment Agreement. Claimant further alleged that the Agreement provided that Cresvale would continue to employ Claimant from October 1, 1990 to February 18, 1992 with the understanding that if neither party gave notice to the other not more than ninety (90) days and not less than thirty (30) days before February 28, 1992 of its intention not to renew, the Agreement would automatically renew for a single additional term extending to February 28, 1993. Claimant also alleged that neither party gave notice to the other of its intention not to renew and, therefore, the Employment Agreement between the parties extended to February 28, 1993. Claimant alleged that on or about January 7, 1993 Claimant received notice by letter dated January 5, 1993, that Cresvale was terminating his employment effective December 2, 1992 and that no further compensation or obligations under the Agreement were due or owed. Claimant further alleged that the actions of Cresvale constituted a breach of the Employment Agreement and wrongful termination. Claimant alleged that Respondents Foster and McDermott were the officials responsible for breaching Claimants Employment Agreement. Claimant also alleged that Cresvale failed to live up to its financial obligations under the Agreement by failing to pay wages for the period from November 15, 1992 through February 28, 1993, except for the days of December 1st and 2nd; by failing to pay Claimant an accrued bonus for the period from October 1, 1992 to February 28, 1993; by failing to pay Claimant for 6 unused vacation days; by failing to provide Medical and Life Insurance through February 28, 1994; and, by failing to make Pension Contributions through February 28, 1993. Claimant also alleged that Cresvale discriminated against Claimant by refusing to pay Claimant the severance package offered to all other employees whose employment had been severed by Cresvale.

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Respondents, in their joint Answer, maintained that there were no allegations with the Statement of Claim against Foster and McDermott. Respondents maintained that during February 1992, when Claimant's Employment Agreement came up for renewal, Marco Roccia of Cresvale's London Office, observed Claimant's work while visiting Cresvale's New York Office and that in June of 1992 Claimant was asked to visit the United Kingdom. Respondents next maintained that in June of 1992 Claimant and Marco Roccia began to negotiate terms with Claimant for a continuation on a temporary basis in the United Kingdom but the parties could not agree on compensation. Respondents further maintained that Claimant again visited the United Kingdom in September 1992 and again the parties were unable to agree on compensation. Respondents maintained that in October, 1992 Claimant rejected the temporary transfer to the United Kingdom. Respondents also maintained that as a result of the amalgamation of Cresvale, there were no positions available for Claimant in New York and the only available position for Claimant was the temporary position in the United Kingdom which Claimant had rejected.

Respondents further maintained that Cresvale paid Claimant wages through to December 2, 1992 via clearinghouse payment transfers and the Claimant was notified of the transfers and was fully aware of the transfers. Respondent also maintained that Chase Manhattan had in fact credited Claimant's account with the transfers. Respondents maintained that Claimant was not entitled to any Bonus payments under the Employment Agreement as Claimant did not meet any of the listed requirements for a bonus or a pro rata share of a bonus. Respondents further maintained that Claimant used up all his allotted vacation days and so was not entitled to vacation pay for unused vacation days. Respondents also maintained that Claimant received full medical coverage through December 31, 1992 with the option to continue coverage pursuant to COBRA.

Respondents maintained that on December 14, 1992 all participants in the pension plan were notified that the firm ceased to make contributions for all participants in the plan as of November 30, 1992 due to economic conditions and so Claimant would not have been entitled to further pension plan payments even if Claimant had not been terminated.

Respondents, in their counterclaim, alleged that on April 27, 1990, Claimant and Cresvale entered into a loan agreement which provide that Cresvale agreed to loan Claimant the sum of \$52,000 at the rate of \$26,000 per annum for two years. Respondents further alleged that Claimant agreed to use the funds solely for the cost of tuition at New York University where Claimant was pursuing a Masters of Business Administration ("MBA"). Respondents also alleged that under the Loan Agreement Claimant's obligation would be canceled provided Claimant completed the requirements for his MBA and remained with Cresvale

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for two years after the MBA was conferred upon him. Respondents alleged that Claimant received his MBA in June, 1992 but that Claimant's employment with Cresvale was terminated on December 2, 1992 and therefore Claimant was obligated to repay the loan. Respondents further alleged that Claimant's termination was through no fault of Cresvale, but rather was the result of Claimant's refusal to accept the assignment with another office.

Respondents alleged that Claimant refused to assure Cresvale in writing that he returned, without keeping copies, all original and copy materials, equipment, documents, and other materials belonging to Cresvale as required under the Employment Agreement and so breached the Employment Agreement.

Claimant, in his reply to Respondent's counterclaim, maintained that the Loan Agreement predated the Employment Agreement and therefore, under the Employment Agreement, Claimant was not obligated to arbitrate any dispute or claim arising out of the Loan Agreement and that the NASD did not have jurisdiction to hear the dispute. Claimant further maintained that under the Loan Agreement Claimant would have to repay the loan if he failed to complete the MBA program or if he left his employment voluntarily within 2 years of completing his MBA. Claimant maintained that he did not leave his employment voluntarily but rather was wrongfully terminated.

Claimant maintained that Respondents' request for an assurance that Claimant had complied with the Employment Agreement was beyond the scope of the Employment Agreement as there was no provision in the Employment Agreement which required Claimant to provide such assurances following his termination.

RELIEF REQUESTED

Claimants requested:

1. Damages in the amount of \$120,000 for loss of income, bonuses, fringe benefits, severance pay and any and all other damages.
2. Dismissal of Respondents' counterclaims.
3. Award Claimant costs, disbursements, attorneys' fees and such other and further relief authorized under the Rules of the NASD as the arbitrators deem just and proper.

Respondents requested:

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1. That Claimant's claim be dismissed.
2. An award of \$52,000 to Cresvale.
3. An order requiring Claimant to return all confidential material in accordance with the Employment Agreement.
4. An award of all costs of Respondents against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

Respondents moved to dismiss the individually named Respondents and the motion was granted.

The arbitration panel determined that it did have jurisdiction to hear disputes arising out of the Loan Agreement.

At the close of the final day of hearings on July 11, 1994 the parties were instructed by the panel to file briefs 30 days from July 11, 1994 and rebuttal briefs 10 days thereafter. Claimants and Respondents submitted post hearing briefs and rebuttals.

Claimant Moved to reopen the hearings to allow evidence of attorneys' fees on July 15, 1994 and Respondents submitted their response July 18, 1994. The panel denied Claimant's motion. Claimants then Moved for the arbitration panel to reconsider its denial of Claimant's motion. Respondents submitted a response dated August 1, 1994 and the arbitration panel denied Claimant's motion for reconsideration.

AWARD

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

1. Respondent Cresvale is liable and shall pay to Claimant the sum of \$56,564.96.
2. The arbitration panel reaffirms its prior ruling granting Respondents' Motion to Dismiss the individual Respondents.

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3. Respondents' counterclaim is dismissed.
4. Each party shall bear its own costs including attorneys' fees.
5. No interest prior to the date of the award. Interest shall accrue at the New York legal rate as of the date of the decision.
6. Award is in full satisfaction of all claims.

FORUM FEES

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

1 prehearing session X \$300 = \$300.

11 sessions X \$750 = \$8,250.

Forum fees Assessed Against:

1. Claimant is assessed \$4,275 which represents one-half of the forum fees due, less \$750 hearing session deposit paid by claimant, leaving \$3,525 due. Claimant is liable and shall pay to the NASD the sum of \$3,525.
2. Respondents are assessed the sum of \$4,275 which represents one-half of the forum fees due, less \$3,150 paid as an additional interim hearing session deposit, leaving \$1,125 due. Respondents are liable, jointly and severally, and shall pay to the NASD the sum of \$1,125.

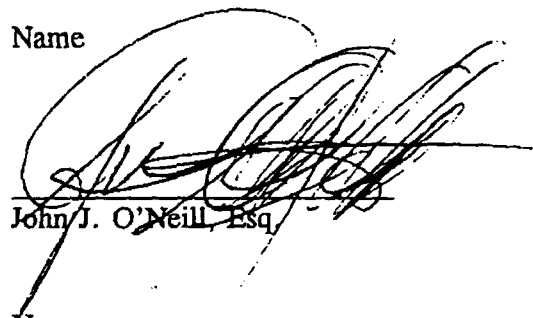
Fees are payable to the National Association of Securities Dealers, Inc.

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Concurring Arbitrators' Signatures

Name



John J. O'Neill, Esq.

Industry Chairman

Name

Industry Panelist

Charles P. Axelrod

Name

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Theodore Kimelman

Date of Decision: NOVEMBER 10, 1994

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