

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Richard A. Rodriquez

93-01655

Name of Respondents

Willard B. Kille III; Entirety, Inc.;
Team Financial, Inc.

REPRESENTATION

For Claimant: Richard A. Rodriquez ("Rodriquez") appeared pro se.

For Respondents: Willard B. Kille III ("Kille"), Entirety, Inc. ("Entirety") and Team Financial, Inc. were represented by Willard B. Kille, President, CEO and Director, Entirety, Inc..

CASE INFORMATION

Statement of Claim filed: April 27, 1993

Claimant's Submission Agreement signed on: April 21, 1993.

Statement of Answer and Motion to Dismiss filed by Respondents Kille and Entirety on: August 18, 1993.

Respondent Kille's Submission Agreement signed on: August 19, 1993.

Respondent Entirety, a NASD member firm, did not file an executed submission agreement.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: March 15, 1994 for Two (2) sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant Rodriguez alleged that Respondent Kille filed a false Form U-5 stating that he had been "terminated for cause" instead of "voluntarily resigned" in order to ruin Rodriguez's chances for further employment. Rodriguez alleged that he voluntarily resigned from Entirety, Inc. and Team Financial, Inc. because of gross misconduct on the part of the four principals prior to the physical altercation he had with a customer that Respondent used as the cause of his termination. Rodriguez further alleged that because of the language present in the Form U-5, he is unable to find employment in the securities industry

Respondents Kille and Entirety denied the material allegations of the Statement of Claim, alleging that:

1. Rodriguez was terminated on March 15, 1994 after a customer of Entirety called to inform the firm of a physical altercation which occurred with Rodriguez on March 14, 1994. Prior to hiring Rodriguez, Kille had advised Rodriguez that he would be terminated if any criminal behavior such as was present on his NASD disclosure occurred;
2. Rodriguez's attempt to "voluntarily resign" on March 19, 1993 occurred after the termination of his employment on March 15, 1993;
3. Texas is an "employment at will" state and Respondents had no other choice but to discharge Rodriguez because of his actions and prior record;
4. Disclosure of the incident is required by the NASD and failure to fully disclose the reason for termination could have placed Respondents in jeopardy with the NASD; and
5. Several of Rodriguez's damage claims are distortions because they are for commissions earned on the sale of insurance products when both Rodriguez and Entirety did not have a Texas insurance license.

RELIEF REQUESTED

Claimant requested entry of an award against Respondents for damages for loss of business, including commissions of approximately \$39,000.00; costs of the NASD Form U-4 processing fee paid upon hiring; exemplary damages for the Respondents' intentional misconduct; costs of arbitration; and for the amendment of the Form U-5 to reflect voluntary resignation.

Respondents requested that this arbitration be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Entirety did not file an executed submission agreement, but as an NASD member firm is required to submit to arbitration pursuant to Section 8 of the NASD Code of Arbitration Procedure.

On October 26, 1993, Respondents filed a Motion for Dismissal without hearing. The Motion and responses were forwarded to the Panel for decision. On January 14, 1994, the Panel determined that the Motion would be denied.

On November 13, 1993, Claimant filed a Motion for Involuntary Arbitration Appearance, requesting that named Respondent Team Financial Inc. and the parent company, Prism, Inc., be required to submit to arbitration. The Motion and all responses were forwarded to the Panel. On January 14, 1994, the Panel determined that the Motion would be denied, the Panel determining that it had no jurisdiction over Team Financial, Inc. and Prism, Inc. because neither firm was an NASD member firm required to submit to arbitration and no agreement to arbitrate existed between Rodriguez, Team Financial, Inc. and/or Prism, Inc. Therefore, the claims against Respondent Team Financial, Inc. are dismissed without prejudice.

On November 13, 1993, Claimant filed a Motion for Summary Judgment. After review of the Motion and all responses, the Panel denied the Motion on January 14, 1994.

At hearing on March 15, 1994, Respondents Kille and Entirety requested leave to file a Motion for Costs. The Panel denied leave to file the Motion. In addition, Respondents requested and were granted waiver of their closing arguments.

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. The Statement of Claim filed by Claimant Richard A. Rodriguez against Respondents William B. Kille III and Entirety, Inc. is hereby dismissed with prejudice and denied in the entirety;
2. The claims against Respondent Team Financial, Inc. are hereby dismissed

without prejudice;

3. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated herein; and

4. All relief requests not specifically granted are hereby denied.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) Hearing sessions x \$600.00 per hearing session = \$1,200.00.

Claimant Richard A. Rodriguez is liable for and shall pay to the NASD forum fees in the sum of \$600.00. Respondents Willard B. Kille III and Entirety, Inc. are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$600.00.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Patrick Lanier, Esq.
Patrick Lanier, Esq.
Public Arbitrator
Chairperson

June 2, 1994

/s/ Felix L. Nigh
Felix L. Nigh
Public Arbitrator

May 30, 1994

/s/ Ronald R. Simpson
Ronald R. Simpson
Industry Arbitrator

May 26, 1994

For NASD Use Only

Date of Decision: 6-8-94