

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Richard G. Hawks

93-01879

Name of Respondent

Hamilton Investments, Inc.

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**REPRESENTATION OF PARTIES**

For Claimant at the hearing: William C. Murphy, Esq. of Murphy, Hupp, Foote, Mielke, & Kinnally, Aurora, Illinois.

For Respondent at the hearing: Rosemarie J. Guadnolo, Esq. of Horvath & Lieber, Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed: May 10, 1993. Claimants' Submission Agreement signed on: May 4, 1993.

Statement of Answer filed by Respondent on: July 16, 1993. Respondent's Submission Agreement signed on: June 23, 1993.

**HEARING INFORMATION**

Hearing dates: February 8, 1994 for two (2) sessions;  
February 9, 1994 for two (2) sessions;  
February 11, 1994 for two (2) sessions;  
March 9, 1994 for two (2) sessions.

Hearing Location: Chicago, Illinois.

### CASE SUMMARY

Claimant Richard Hawks ("Hawks"), a previous employee of Respondent Hamilton Investments, Inc. ("Hamilton") alleged that Hamilton wrongfully discharged him and breached an employment contract which was agreed to between Hawks and Hamilton. Hawks alleged that Hamilton wrongfully terminated his rights under the employment agreement and rights to the commissions of the recruited brokers, and appropriated the 2,000 leads of Hawk's potential and actual customers for its own use and to the exclusion of Hawks'.

Respondent Hamilton stated in their Answer to the Claim, that there was an employment agreement entered into with Hawks, but denies the specific terms which Hawks alleges were breached. Hamilton set forth the following affirmative defenses in their Answer: 1. The contract is unenforceable under the Statute of Frauds; 2. The contract was terminable at will and terminated in April 1990; 3. Hamilton repudiated any previous compensation agreements with Hawks, and 4. Hawks did not satisfactorily perform the duties required of him by Hamilton.

### RELIEF REQUESTED

Claimant requested (A.) That claimant under the agreement be declared entitled to 5% of the gross brokerage commissions earned by brokers recruited by him for the first 13 months of their service, and 3/4 of 1% of the gross brokerage commissions earned by the recruited brokers after the 13 months so long as they work for the Company and Claimant works for no other firm; (B.) That an accounting be taken of the commissions earned by said recruited brokers, and that after allowing for the salary and all advances paid claimant, respondent be ordered to pay claimant the balance; (C.) That claimant be declared entitled to 15% of underwriting and management fees of the syndicate arranged by him under the Universal agreement; (D.) That an accounting be taken of the Mutual Funds Department organized by claimant during his tenure and respondent be ordered to pay to claimant the sum of money so determined; (E.) That claimant be declared entitled to receive his unpaid expenses incurred by him in and about the business of respondent; (F.) That an accounting be taken of said unpaid and unreimbursed expenses and respondent be ordered to pay such sums so found to claimant; (G.) That the discharge of claimant be declared wrongful and (1) that claimant be reinstated in his employment with respondent, (2) that claimant's rights under Paragraph A be declared not terminated in the event claimant is forced to join another firm because of his wrongful discharge by respondent, but continuing for a time to be determined by the arbitrators, and (3) that claimant have such actual and punitive damages as may be established by the evidence; (H.) That a total sum between \$500,000.01 and \$5,000,000.00 be awarded claimant; (I.) That interest be declared payable on all sums due and unpaid; (J.) That claimant have such other and further relief as the arbitrators deem just.

Respondent requested that the Statement of Claim be denied.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties present at the hearing have agreed that the Award in this matter may be executed by 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 original remains 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:

(The following determinations of the panel specifically correspond to the claimant's requests set forth under the heading **Relief Requested** in this Award.)

A. Respondent Hamilton Investments, Inc. shall be and hereby is liable for, and shall pay to the Claimant, Richard Hawks, five percent (5%) of the gross brokerage commissions by the recruited brokers for the Wausau office and Janesville office which totals Sixty Four Thousand, Seven Hundred Sixty Six Dollars (\$64,766.00). Claimant's request for a three fourths (3/4) of one percent (1%) trailer for gross brokerage commissions, is denied.

B. Claimant's request that an accounting be taken of the commissions earned by said recruited brokers, and that after allowing for the salary and all advances paid claimant, respondent be ordered to pay claimant the balance, is denied.

C. Claimant's request that he be declared entitled to 15% of underwriting and management fees of the syndicate arranged by him under the Universal agreement, is denied.

D. Claimant's request that an accounting be taken of the Mutual Funds Department organized by claimant during his tenure and that respondent be ordered to pay to claimant the sum of money so determined, is denied.

E. Respondent Hamilton shall be and hereby is liable for, and shall pay to the Claimant, unpaid expenses incurred in the amount of Three Thousand, Five Hundred Forty Five Dollars and Sixty Six Cents (\$3,545.66).

F. Claimant's request that an accounting be taken of said unpaid and unreimbursed expenses and respondent be ordered to pay such sums so found to claimant, is denied.

G. Claimant's request that the discharge of him be declared wrongful, is denied.

(1) Claimant's request that he be reinstated in his employment with respondent, is denied.

(2) Claimant's request that his rights under Paragraph A be declared not terminated in the event claimant is forced to join another firm because of his wrongful discharge by respondent, but continuing for a time to be determined by the arbitrators, is denied.

(3) Claimant's request that he have such actual and punitive damages as may be established by the evidence, is denied.

H. In summary, the total amount awarded to the claimant is Eighty Three Thousand, Three Hundred Eleven Dollars and Sixty Six Cents (\$83,311.66).

I. Claimant's request that interest be declared payable on all sums due and unpaid, is denied.

J. Claimant's request that he have such other and further relief as the arbitrators deem just, is granted: Respondent shall be and hereby is liable for, and shall pay to the Claimant, the amount of Fifteen Thousand Dollars (\$15,000.00) for claimant's work in the Rockford office. This amount of \$15,000.00 is included as part of the aggregate of \$83,311.66 as awarded in the summary part H. above.

#### FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

8 hearing sessions X \$1000.00 = \$8000.00

Pursuant to Section 44(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$500, and shall retain the hearing session deposit in the amount of \$1000 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$7000 are assessed against Claimant in the amount of \$3000 and against the Respondent in the amount of \$4000.

Additional Forum Fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

**By The Arbitration Panel:**

Dated:

5-9-94

s/s Gregg Rzepczynski, Esq.  
Gregg Rzepczynski, Esq.  
Presiding, Industry Arbitrator

5-10-94

s/s Thomas E. Haviland, Jr.  
Thomas E. Haviland, Jr.  
Industry Arbitrator

5-5-94

s/s Howard S. Suskin, Esq.  
Howard S. Suskin, Esq.  
Industry Arbitrator

Date Award Served By The NASD: 5-10-94