

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Roland S. Williams

93-03046

Name of Respondent

Commonwealth Associates

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 4, 1993, Claimant Roland S. Williams, by and through his counsel David E. Robbins, Esq. of Kaufman, Feiner, Yamin, Gildin & Robbins, New York, NY, alleged that he was employed by Respondent Commonwealth Associates in the capacity of a commission broker from December 29, 1992 through April 23, 1993 at which time he voluntarily resigned to become a broker at Whale Securities, Co., another NASD member firm. Claimant further alleged that the terms of his at-will employment with Respondent Commonwealth Associates included an upfront loan, which was paid back, and a commission payout of 50% for principal transactions and 40% for agency trades whereby he was to be paid commission earned on the 15th of each month, at which time, on March 15, 1993, he received what would be his last paycheck because Respondent chose to withhold payment for subsequent commissions earned. Claimant contended that despite due demand of the commissions owed, both orally and in writing, Respondents has refused to make payment whereby their only stated reason is that after Claimant left their employ, they received a complaint from one of his former customers; however, that customer has not alleged any wrongdoing on the part of Claimant, he has, however, complained about Respondent. Claimant further contended that in any event, Respondent has absolutely no right to withhold commissions earned by Claimant and if that customer's dispute results in an arbitration or litigation and Respondent believes that Claimant should be joined as a party, they may seek to do so at that time.

Claimant Roland S. Williams strongly objects to Respondent's request to submit an Answer whereby if Section 25(b)(2)(iii) of the Code is to mean anything, then Respondent must be precluded from filing an Answer in this case.

Respondent Commonwealth Associates, by and through their counsel David S. Richan of Tenzer, Greenblatt, Fallon & Kaplan, New York, NY, maintained that while they apologize for the delay in submitting its Answer, they have no record of receiving the claim in this matter until approximately December 9, 1993 and in fact, after further investigation, Respondent believes that both the NASD's October 5, 1993 letter identifying the Arbitrator, were delivered for the first time to Respondent on or about December 9. Respondent further maintained that the Arbitrator should accept and consider their Answer. Respondent contended that Claimant's claim should be dismissed and Claimant fails to inform the Arbitrator that under paragraph 9 of his Employment Agreement with Respondent, signed by him on January 18, 1993, he agreed: "[T]hat he will be responsible for, will pay, and will fully indemnify Commonwealth for and hold Commonwealth harmless from any and all losses, claim, damages, penalties, awards liabilities...". Respondent further contended that Claimant also fails to inform the Arbitrator that the Employment Agreement provides that: "Commonwealth shall be entitled to deduct from any commission due or to become due to Employee as a result of the provisions of this Section [9]". Respondent asserted that by letter dated December 15, 1993, they were served with a formal NASD Arbitration claim by former customers of both Commonwealth and Claimant, and although Claimant is not named as a Respondent in the claim, he is alleged to have made unauthorized transactions in the account. Respondent further asserted that indeed, although Claimant was permitted to resign from Commonwealth, he did so under threat of suspension for some of the very transactions of which is complained. Respondent further maintained that accordingly under the express terms of Claimant's Employment Agreement, Respondent is entitled to deduct from any commissions due to Claimant because the claim seeks damages in excess of \$97,000, Claimant cannot reasonably argue that he should receive any portion of the \$4,235.00 in commissions he claims are due to him.

RELIEF REQUESTED

Claimant Roland S. Williams requested the sum of \$4,235.00 in actual damages plus interest and costs.

Respondent Commonwealth Associates requested the claim be dismissed.

AWARD

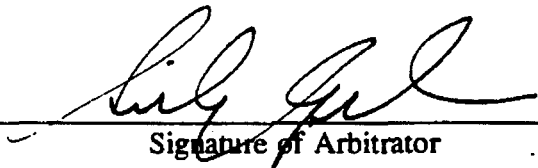
Pursuant to Section 10 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Securities Arbitrator, Sidney Geller, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on July 23, 1993 and by the Respondent on January 5, 1994.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Claimant Roland S. Williams' Motion to Preclude is denied.
2. Respondent Commonwealth Associates is liable and shall pay to the Claimant Roland S. Williams the sum of \$4,235.00 in damages.
3. Respondent Commonwealth Associates is liable and shall pay to the Claimant Roland S. Williams simple interest at the legal statutory rate from April 23, 1993 to the date of payment of the award.
4. The parties shall bear their respective costs.
5. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Roland S. Williams shall be retained by the NASD, Inc. Respondent Commonwealth Associates is liable and shall pay to the Claimant the sum of \$575.00, as reimbursement.

AFFIRMATION

I, **SIDNEY GELLER**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: February 18, 1994

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STATE OF: *New Jersey*

SS:

COUNTY OF: *Camden*

On this *7th* day of *February* 1994, before me personally appeared Sidney Geller to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Paul F. Viscusi

NOT
My Comm