

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Ivan Castellon

Case No.93-03109

Name of Respondent

Hencorp Becstone & Co.

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**REPRESENTATION**

For Claimant, Ivan Castellon ("Castellon"): Ronald Shindler, Esq. of Fowler, White, Burnett, Hurley, Banick & Strickroot, Miami, Florida.

For Respondent, Hencorp Becstone & Company ("HB&Co"): George Befeler, Esq. of Fitzgerald, Delgado, Befeler & Portuondo, P.A., Miami, Florida.

**CASE INFORMATION**

Statement of Claim filed on August 10, 1993.

Claimant's Submission Agreement signed on July 26, 1993.

Statement of Answer filed by Respondent on November 8, 1993.

Respondent's Submission Agreement signed on November 5, 1993.

**HEARING INFORMATION**

On May 25, 25 and June 3, 1994, in Fort Lauderdale, Florida, hearings lasting 6 sessions were conducted.

### **CASE SUMMARY**

Claimant alleged that Respondent unlawfully and unilaterally withheld commissions earned by Claimant; that the commissions were withheld as a result of debit balances in certain customer accounts for which Claimant was the broker of record; and, that Claimant did not engage in any improper conduct in connection with these accounts, nor did he agree to any such withholding of commissions. The second claim for tortious interference with Claimant's employment relationship with Merrill Lynch, Pierce Fenner and Smith, Inc. was withdrawn at the beginning of the hearing on May 25, 1994.

Respondent denied all allegations of wrongdoing; admitted withholding commissions from the Claimant; alleged that such withholding was the result of rightful set-offs against the debits in Claimant's customers' accounts; and that such debits were subject to an AE agreement and personal guaranty in favor of Refco which had been assigned to the Respondent.

Respondent filed a Counterclaim, and alleged that Claimant still owes monies to the Respondent under the AE Agreement and the personal guaranty.

Claimant responded to the Counterclaim by denying any personal liability for damages asserted in the Counterclaim against him.

### **RELIEF REQUESTED**

Claimant sought to recover damages in the amount of \$61,000.00 of the commissions withheld, commissions generated by the accounts that remained with Respondent following his termination of employment with Respondent plus interest, punitive damages and treble damages under the Florida Civil Theft Statute. The claim for costs and attorneys fees was reserved by the Claimant for judicial determination. Claimant also requested dismissal of the Counterclaim.

Respondent requested dismissal of all claims and Counterclaimed for the debit amount of \$115,198.41 which remains in Claimant's former Customers' accounts along with such costs as will make Respondent whole.

### **OTHER ISSUES CONSIDERED & DECIDED**

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

original 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. Respondent, HB&Co, is found not liable and, therefore, all claims against it are hereby dismissed.
2. Claimant's requests for punitive damages, treble damages and attorney's fees and costs are hereby denied.
3. Claimant/Counter Respondent is found not liable and, therefore, the Counterclaim against him is hereby dismissed.
4. Respondent's request for costs is denied.

### **OTHER COSTS**

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

### **FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$4,500.00 (6 hearing sessions x \$750.00).

1. Claimant, Castellon, is hereby assessed \$2,250.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof, leaving a balance due to the NASD of \$1500.00.
2. Respondent, HB&Co, is hereby assessed \$2,250.00 for which the NASD shall retain the \$600.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$1,650.00.

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

Concurring Arbitrators' Signatures

                    /s/                      
Stan West

Public

                    /s/                      
V. Michael Pabalis

Public

                    /s/                      
Robert P. Root

Industry

Date of Decision:                     July 12, 1994