

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Robert E. Laffan,

93-03131

Name of the Respondent

Gulfstream Financial Associates,  
A Kemper Financial Company

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Representation

For the Claimant Robert E. Laffan ("Claimant"): William Laffan, Jr., Esq.

For the Respondent Gulfstream Financial Associates ("Respondent"): Ronald Schindler, Esq. of Fowler, White, Burnett, Hurely, Barnick & Strickroot, P.A. located in Miami, Florida.

Case Information

Statement of Claim filed : August 9, 1993.

Claimant's Submission Agreement signed on: August 7, 1993.

Statement of Answer filed by Respondent on: January 10, 1993

Respondent did not execute a submission agreement.

Hearing Information

Pre-Hearing Date/Session:	April 5, 1994	-	Two Sessions
Hearing Date/Sessions:	June 16, 1994	-	Two Sessions

The hearing was conducted at the National Association of Securities Dealers, Inc. offices located in New York, New York.

### Case Summary

Claimant alleged that during the period of September 1987 until May 1990, he was employed by the Respondent. Claimant also alleged that the Respondent's former President, Mr. Ron Potts, had made certain promises to the Claimant in order to convince the Claimant to enter into the employment of the Respondent. Due to the Claimant's institutional sales background, the Respondent wanted the Claimant to become manager of institutional sales of the new South Florida branch office. Furthermore, the Respondent promised to pay the Claimant a salary of \$6,000 dollars per month, which the Respondent had allegedly failed to do.

Moreover, Claimant alleged that the Respondent had agreed to pay commissions of 40%, except for syndicate sales which would have commissions of 50%, to all salaried personnel. However, Respondent allegedly only paid commissions of 33 1/2 to 45%.

Furthermore, Claimant alleged that he had been promised, as a condition of employment, to be able to work 8 to 10 days a month in the Northeast, in order to tend to his private New York options business. However, the Claimant alleged that during January 1989, he was denied permission to fly to New York and as a result, sustained options losses approaching \$10,000 dollars.

Claimant further alleged that he had suffered additional losses due to his employment because he had leased an apartment and bought a new car in Florida and thus had incurred these added expenses.

In addition, the Claimant alleged that in November 1989, the Respondent, while underwriting Check Robot stock, was aware that Check Robot was not performing as expected, yet the Respondent continued to recommend that its clients buy stock in Check Robot. Therefore, the Claimant alleged that he had suffered \$40,000 dollars in lost customer confidence, because he made buy recommendations on this faltering company.

Claimant also alleged that he was owed commissions for sales of Sport Tech and Check Robot stock totalling \$20,000 dollars.

Respondent denies all allegations of wrongdoing and maintained that under the terms of the employment agreement the Respondent never agreed to pay the Claimant \$6,000 dollars per month. Rather, the terms of the agreement specifically states that only \$4,000 dollars per month would be paid. Moreover, the Respondent claimed that the \$4,000 dollars was merely an advance against commissions.

Furthermore, Respondent maintained that any options losses sustained by the Claimant are not the responsibility of the Respondent. The Claimant was free to terminate his employment with the Respondent at any time, and should have done so in order to prevent any losses from occurring.

- Moreover, Respondent denies that the Claimant was forced to acquire a residence in South Florida as a requirement of employment and therefore is not liable for any expenses the Claimant incurred while an employee of the Respondent.

In addition, the Respondent asserted that the Claimant had not offered any evidence of commissions that were outstanding for Sports Tech or Check Robot sales, and that they should be denied because of lack of proof.

Similarly, Respondent alleged that the Claimant's assertions of damages for lost customer confidence, business meeting expenses, and miscellaneous expenses are unsubstantiated and should be denied.

As a Counterclaim, Respondent alleged that pursuant to an unpaid promissory note the Claimant owed Respondent \$5,000 dollars plus interest.

#### **RELIEF REQUESTED**

Claimant requested:

1. The sum of \$84,000.00 for unpaid wages;
2. The sum of \$9,300.00 for options losses;
3. The sum of \$5,000 for the non-payment of commissions relating to the sales of Sport Tech stock;
4. The sum of \$10,000.00 for the non-payment of commissions relating to the sales of Check Robot stock;
5. The sum of \$40,000.00 for the loss of customer confidence, resulting from the buy recommendations of Check Robot;
6. The sum of \$6,000.00 for the non-payment of business expenses;
7. The sum of \$5,000.00 for miscellaneous business expenses;
8. Such other relief as the arbitrators deem fit.

Respondent requested a dismissal of the claim and as a counterclaim:

1. The sum \$5,000.00 of unpaid principal of a promissory note;

2. Interest on this principal, at a rate of interest to be determined by the arbitrators;
3. That the Claimant should bear all arbitration costs;
4. That the Claimant should bear the costs of Respondent's attorney's fees; and
5. Such other relief as the arbitrators deem fit.

#### 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 originals remain on file with the NASD. Also, after reviewing the respective pleadings and after hearing the Respondent's counsel orally stipulate to his client's submission to the jurisdiction of this proceeding and to the acceptance of the Panel, the Panel deemed that it had complete jurisdiction over the Parties and this matter.

#### 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. All claims by the Claimant against the Respondent, for unpaid wages, options losses, non-payment of commissions, loss of customer confidence, non-payment of all business expenses, shall be dismissed with prejudice.
2. All other claims against Respondent shall be dismissed with prejudice.
3. Claimant shall be liable to the Respondent in the sum of \$5,000.00 for the outstanding promissory note, and Claimant shall be liable for the payment of interest thereon at a rate of 6% from the date of default stipulated in the note until June 16, 1994.
4. Each party shall bear its respective costs, including attorney's fees.

### FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the panel has determined that the NASD shall retain the non-refundable filing fee \$500.00, and the hearing session deposits deposited by each party and the following Forum Fees are assessed. Each party shall bear 50% of the assessed forum fees to be paid to the NASD.

#### Costs:

5 hearing sessions at \$750 per session = \$3,750.00.

#### Claimant Costs

50% of \$3,750.00 = \$1,875.00 less deposit of \$750.00  
balance due = \$1,125.00 dollars

#### Respondent Costs

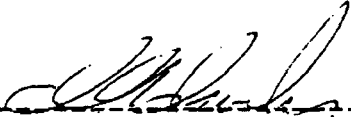
50% of \$3,750.00 = \$1,875.00 dollars less deposit of \$800.00  
balance due = \$1,075.00 dollars

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

Concurring Arbitrators' Signatures  
Name

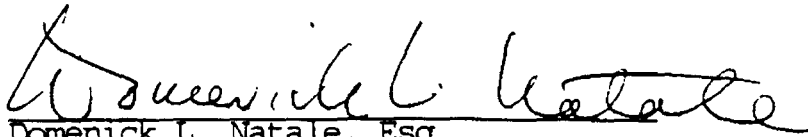
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Domenick L. Natale, Esq.  
Chairperson - Industry Arbitrator

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Leon Goldsholl  
Industry Arbitrator

  
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Thomas A. Turley, Esq.  
Industry Arbitrator

Date of Decision: July 28, 1994

Concurring Arbitrators' Signatures  
Name

A handwritten signature in cursive script, appearing to read "Domenick L. Natale", written over a horizontal line.

Domenick L. Natale, Esq.  
Chairperson - Industry Arbitrator

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Leon Goldsholl  
Industry Arbitrator

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Thomas A. Turley, Esq.  
Industry Arbitrator

Date of Decision: July 28, 1994

Concurring Arbitrators' Signatures  
Name

\_\_\_\_\_  
Domenick L. Natale, Esq.  
Chairperson - Industry Arbitrator

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Leon Goldsholl  
Industry Arbitrator

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Thomas A. Turley, Esq.  
Industry Arbitrator

Date of Decision: July 28, 1994



STATE OF

COUNTY OF

On this 28 day of July, 1994, before me personally appeared Dominick R. Buck known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

Deborah A. DeJesus

DEBORAH A. DEJESUS  
Notary Public, State of New York  
No. 02DE5022979  
Qualified in New York County  
Commission Expires January 24, 1996

STATE OF

COUNTY OF

On this 28 day of July, 1994, before me personally appeared Leon Goldstein known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

Deborah A. DeJesus

DEBORAH A. DEJESUS  
Notary Public, State of New York  
No. 02DE5022979  
Qualified in New York County  
Commission Expires January 24, 1996

STATE OF

COUNTY OF

On this 28 day of July, 1994, before me personally appeared Thomas Turley known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

Deborah A. DeJesus

DEBORAH A. DEJESUS  
Notary Public, State of New York  
No. 02DE5022979  
Qualified in New York County  
Commission Expires January 24, 1996