

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Robert J. Dwyer, Sr.

93-03313

Name of Respondents

Gilford Securities, Inc.
Ralph Worthington

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 24, 1993, Claimant Robert Dwyer, Sr., who appeared Pro Se, alleged that Respondents Gilford Securities, Inc. and Ralph Worthington dismissed Claimant from his job as Senior Vice President in charge of the Institutional Equities Department at Respondent firm Gilford Securities, Inc. on May 11, 1993. The Claimant further alleged that he worked at Respondent Gilford Securities, Inc. from October 19, 1992 to May 11, 1993 and that his base salary was \$50,000.00 per year plus commission and bonus incentives based upon the Institutional Equities Department volume and profit performance. The Claimant contended that prior to his abrupt dismissal he took a vacation for one week, during the week of May 10, 1993 and that it was common knowledge around the department that he was taking a vacation. Claimant Robert Dwyer, Sr. alleged that on May 11, 1993, Respondent Ralph Worthington called him at his home, indicating that the vacation he took was not "cleared" by Respondent, and that Respondent Ralph Worthington proceeded, on the telephone, to dismiss Claimant, effective as of May 7th, 1993. The Claimant contended that based upon Respondents' abrupt dismissal of Claimant, he is entitled to relief in the form of compensation of salary, and the Respondents should thusly be held liable.

Respondents Gilford Securities, Inc. and Ralph Worthington, through Ralph Worthington as C.E.O., maintained that the Claimant was hired by Respondents to increase the institutional sales and trading business at the firm, and that the Claimant's specific financial arrangement was as follows: 1) a \$50,000.00 annual salary draw versus a 25% payout on gross production under his rep. number (OIA); 2) 20% share in the gains or losses in a trading account capitalized by Respondent company; 3) 50% participation in the net of the institutional department after all payouts have been made, all direct and variable trade expenses, a 7%-of-gross charge, and

funding of bonus pools. Respondents further contended that it was agreed between the parties that there would never be a cost burden to the firm. The Respondents further maintained that the institutional effort was generally unsuccessful and that after the six month trial period was over, it became clear that the institutional effort was unsuccessful and Claimant would eventually have to be let go. The Respondents contended that they were only made aware of Claimant taking a vacation when Respondent, Ralph Worthington went looking for him.

Respondents filed a Counterclaim against Claimant stating that Claimant owes Respondent \$3,993.00 based on 20% of trading losses which were \$19,966.00, since he was hired to start a new department on a trial basis, which was unsuccessful.

In a reply to the Answer and Counterclaim, Claimant Robert Dwyer, Sr. maintained that Respondent Ralph Worthington's firing of Claimant was done in a fit of pique by telephone on May 11, 1993, and that he was not a strictly commissioned employee, but was hired at \$50,000.00 a year, plus a percentage of future gross and net commissions. Counter Respondent Dwyer was not to share in a 20% gain or loss on a trading account, there was no six month trial period for the institutional effort, and that there was never a discussion between Claimant and Respondent Ralph Worthington about the failed institutional effort. The Claimant further maintained that the unfair and arbitrary policies of Respondent Gilford Securities, Inc. does not somehow make it right. Claimant requests that his claim for \$9,615.40, plus costs be upheld and Respondents' Counterclaim for \$3,993.00 be dismissed.

In a Reply to Robert Dwyer's Response, the Respondents refuted all of the Claimants defenses.

RELIEF REQUESTED

Claimant Robert Dwyer, Sr. requested \$6,730.78 in actual damages, \$2,884.62 in punitive damages, and requested the Counterclaim against him be dismissed.

Respondents Gilford Securities, Inc. and Ralph Worthington requested that the claims of the Claimant be dismissed and that they should recover \$3,993.00 on their Counterclaim, plus costs.

AWARD

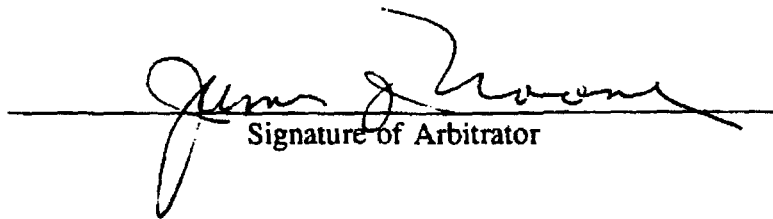
Pursuant to Section 10 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Industry Arbitrator, James J. Noone, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on August 19, 1993 and by the Respondents on November 22, 1993.

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

1. Respondents Ralph Worthington and Gilford Securities, Inc. are jointly and severally liable and shall pay to the Claimant Robert Dwyer, Sr. \$2,028.65 in actual damages.
2. \$500.00 of the \$575.00 of the filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondents Gilford Securities, Inc. and Ralph Worthington are liable and shall pay to the Claimant Robert Dwyer, Sr. \$500.00 for reimbursement of the NASD filing fee. The \$575.00 filing fee previously deposited with the NASD, Inc. by the Respondents for the Counterclaim shall also be retained by the NASD, Inc.

AFFIRMATION

I, **JAMES J. NOONE**, 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: May 19, 1994

STATE OF: New Jersey

SS:

COUNTY OF: Bergen

On this 9th day of May 19 94, before me personally appeared **James J. Noone** 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.

Kathleen S. Ruh

**KATHLEEN S. RUH
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES
JAN. 18 1996**