

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

William S. and Joan M. Benecick

93-03934

Name of Respondent(s)

Peak Securities Corp.

REPRESENTATION

The Claimants appeared pro se.

For Respondent Peak Securities Corporation: Stephen W. Wilk, Esq., New York, NY.

CASE INFORMATION

Statement of Claim filed: September 29, 1993.

Claimants' Submission Agreement signed on: September 24, 1993.

Statement of Answer filed by Peak Securities Corp. on: December 22, 1993.

Respondent Peak Securities Corp.'s Submission Agreement signed on: December 1, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: July 14, 1994 / Two Sessions
July 15, 1994 / Two Sessions

Hearing Location: NASD offices located in Atlanta, GA.

CASE SUMMARY

Claimants alleged that Respondent refused to honor their agreement to pay commissions and salary to Claimants, namely sales commissions due William S. Benecick for August, 1993, and salary due Joan M. Benecick for August, 1993.

Respondent maintained there were disputes between the parties concerning their relationship and Respondent denied that it owed any money to Claimant William Benecick and denied knowledge of whether Claimant Joan M. Benecick performed the services she claims to have rendered, but admitted that the payment of her alleged salary for August 1993 was deferred.

Respondent asserted three counterclaims against the Claimant William S. Benecick alleging the following:

- i. on September 17, 1993 Claimant William S. Benecick wrongfully and without proper cause resigned and at that time he owed to Respondent the sum of \$6,689.85 representing the outstanding balance of his share of the start up and ongoing and operating expenses including cash advances, after giving him credit for commissions earned;
- ii. that as part of the establishment of the branch office, Respondent entered into certain leases and the leases cannot be cancelled and Respondent is liable for the payments due under such leases; and,
- iii. Respondent William S. Benecick was responsible for 40% of the ongoing and operating expenses of the branch office and the salary of Joan M. Benecick was included in such expenses. Therefore, in the event that Respondent is liable to Claimant Joan M. Benecick for the sum of \$1,200.00, William S. Benecick is liable to Respondent for the sum of \$480.00 and 40% of the employers share of FICA relating to the \$1,200.00 as his share of such expenses.

In response to the first counterclaim Claimant William S. Benecick maintained he did not wrongfully or without proper cause resign and he does not recognize the sum of \$6,689.85 as being owed as the Atlanta branch that Claimants started had earned credits for Peak Securities Corp. that exceeded their listing of total expenses.

In response to the second counterclaim Claimant William S. Benecick denied any responsibility for Respondent's exposure to potential liabilities which will occur due to circumstances brought about by their failure to honor commitments and agreements basic to continuation of the Atlanta branch.

In response to the third counterclaim the Respondent maintained that application of the 60/40 sharing of expense to a single item without regard to net profit or loss during a particular period is not accurate.

RELIEF REQUESTED

Claimants requested total damages in the sum of \$16,621.00 plus costs of arbitration and a dismissal of Respondent's counterclaims.

Respondent requested a dismissal of the claim of Claimants; the sum of \$6,689.85 on the first counterclaim; the sum of \$98,581.07 on the second counterclaim; and the sum of \$480.00 plus 40% of the employer's share of FICA relating to the \$1,200.00 on the third counterclaim plus the costs and disbursements of this action, including attorneys' fees.

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. The panel finds in favor of Claimant Joan M. Benecick in the amount of \$1,200.00 for one month of salary;
2. All other claims of Claimants are dismissed;
3. All counterclaims are denied;
4. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

4 sessions x \$600.00 = \$2,400.00 less Claimants' hearing
session deposit (\$300.00) less Respondent's hearing
session deposit (\$750.00) less deposit for postponement fee (not granted)
(\$450.00) = net \$900.00 due

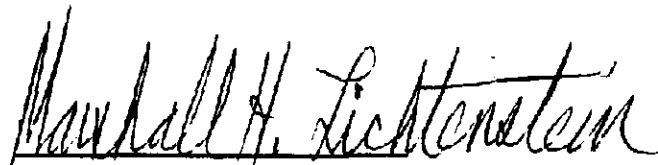
Forum Fees Assessed Against:

Page 4
Award #93-03934

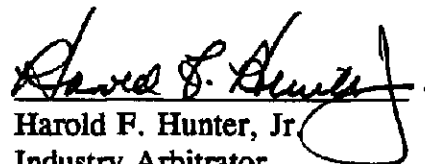
The Claimants be and hereby are liable and shall pay to the NASD the sum of \$900.00 representing forum fees.

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

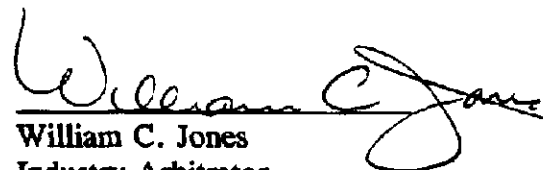
ARBITRATOR'S SIGNATURE

A handwritten signature in cursive script, reading "Marshall H. Lichtenstein".

Marshall H. Lichtenstein, Esq.
Industry Arbitrator

A handwritten signature in cursive script, reading "Harold F. Hunter, Jr.". The signature is written over a horizontal line.

Harold F. Hunter, Jr.
Industry Arbitrator

A handwritten signature in cursive script, reading "William C. Jones". The signature is written over a horizontal line.

William C. Jones
Industry Arbitrator

Date of Decision: August 15, 1994