

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Carmela Laurella
East Coast Capital Corporation

vs.

Award #
93-04040

Name of Respondent

Richard Kaner

REPRESENTATION

For Claimants, Carmela Laurella and East Coast Capital Corp. ("Claimants"), T.R. Kelly, Esq. from the law firm of Epstein, Becker and Green located in New York, New York.

For Respondent, Richard Kaner ("Respondent"), John J. McGivney, Esq. from the law firm of Burns & Levison located in Boston, Massachusetts.

CASE INFORMATION

Statement of Claim was filed on October 5, 1993.

Claimants' Submission Agreement was signed on September 29, 1993.

Statement of Answer was filed by Respondent on December 7, 1993.

Respondent's Submission Agreement was signed on December 7, 1993. (Although Respondent edited the Submission, he acknowledged that NASD has jurisdiction over him.)

HEARING INFORMATION

Hearing Date/Sessions: June 20, 1995 - 2 Sessions

Hearing Location: American Arbitration Association, 11th Floor, 133 Federal Street, Boston, MA 02110.

CASE SUMMARY

Claimant, Laurella, alleges that at all times, she was the sole shareholder, principal and president of East Coast Capital (ECC). Claimant states that in early 1992, Respondent contacted her concerning Respondent's frustration with a real estate deal in Florida. Claimant also states that in connection with this conversation, she agreed to make an inquiry with one of Claimant's clients, "The Related Companies of Florida (TRCF)", in an effort to save Respondent's deal. Claimant further states that in return for contacting TRCF, the Respondent agreed to act with the Claimant as co-brokers on the transaction and evenly split any commissions earned. Claimant states that this fee splitting arrangement is standard in the industry.

Claimant alleges that she was "significantly and intimately" involved in the transaction and that as a result of her involvement, the Respondent and TRCF executed a financial consulting agreement. Claimant states that as a result of this agreement, the Respondent agreed to pay the Claimant any fee due her. Claimant states that the total commissions paid to the Respondent, due to the consummation and completion of the transaction, was \$119,880.00. Claimant further alleges that she is entitled to one half of this, \$59,940.00.

Claimant alleges that after the closing of the deal, in June 1992, the Respondent asked Claimant to keep her commission without sharing it with her partners. Claimant also alleges that Respondent asked her to accept less than she was entitled to under the contract. Claimant states that the first check she received was \$13,482, fifty percent of what she would be entitled to. Claimant further states that Respondent told Claimant "that was all she would get". Claimant states that Respondent told her the fee was cut because Respondent agreed to pay TRCF's legal fees for \$15,000.

Claimant alleges that in June 1993, the Respondent received his second commission fee for the deal, totaling \$59,940.00 and failed to pay her the commission fee due. Claimant states that she then made a demand, through her broker dealer, Compass Securities, for the \$38,958.00 that she was never paid.

Claimant concludes by stating Respondent's actions amount to causes of action lying in breach of contract, fraudulent and negligent misrepresentation and unfair and deceptive Trade practices under Massachusetts General Laws, Ch.93A.

Respondent alleges that the alleged oral agreement between Respondent and Claimant Laurella is void and unenforceable under Massachusetts General Law, Ch.259,s7. Respondent states that this section renders void any oral contract which is an "...agreement to pay compensation for service as a broker...in negotiating the purchase, sale or exchange of a business...". Respondent also states that Claimant admits that their claim is for compensation towards Claimant service as a broker in negotiating the purchase and sale of a limited partnership. Respondent further states that because Claimants have asserted applicability of Massachusetts law, that this claim

should be dismissed pursuant to the NASD Code.

Respondent states that Claimants only involvement in this matter was a phone call with TRCF manager, Jorge Lopez, to confirm TRCF's acquiring of the property involved in the deal. Respondent contends that in February 1992, he brought the parties to the deal together. Respondent also contends that once the deal was put together, he received a check for \$44,940 and promptly paid Claimant 30% of this, \$23,482. Respondent states that he promised 30% of first installment to Claimant. Respondent further contends that the Claimant accepted, endorsed and deposited the check for \$13,482.

Respondent denies that he ever agreed with Claimant to evenly split fees; that he owes Claimant any sums; that the Claimant ever had an exclusive relationship with developer; and that the deal could not have been consummated without Claimants participation.

Respondent concludes by stating that Claimant merely made a telephone call, and in response he offered Claimant a small share in appreciation for her efforts. Respondent asserts affirmative defenses: that the alleged contract is unenforceable under Massachusetts General Law c.259,s7; any claims have been satisfied; payment; waiver of claim; estoppel; laches in bringing claim; failure of consideration; unreasonable reliance; statute of frauds; and fraud on the part of the Claimants in bringing this claim.

RELIEF REQUESTED

Claimants request an award of \$46,458; statutory interest; treble damages in the amount of \$139,374 under Massachusetts General Law, Ch.93A; attorney's fees and costs; and such relief as the Panel deems just and proper.

Respondent requests dismissal of all claims and an award of attorney's fees and costs.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants are awarded and Respondent shall pay Claimants Seventeen Thousand Nine Hundred Eighty Two Dollars and Zero Cents (\$17,982.00) without interest.
2. All other claims for relief are denied.

FORUM FEES

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed.

Non-refundable Filing Fee - \$500.00

Hearing Session Fees - \$1,500.00 (2 hearing sessions x \$750.00 per session)

Total Fees = \$2,100.00


1. Claimants are assessed ten percent (10%) of the forum fees, \$2,10.00. Claimant previously paid \$1,250.00 and is entitled to a refund in the amount of \$1,040.00.
2. Respondent is assessed \$1,890.00 and shall satisfy the fees assessed by reimbursing Claimants \$1,040.00. Respondent previously deposited \$600.00 and owes a balance of \$250.00.

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

ARBITRATION PANEL

James E. Dowd, Esq.	-	Industry Chairperson
Theodore R. Turner, Jr.	-	Industry Panelist
Robert C. Wyman	-	Industry Panelist

Concurring Arbitrator's Signature


James F. Dowd, Esq.

NASD Date of Decision: July 12, 1995

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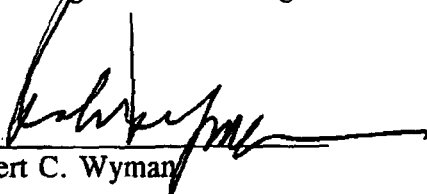
1. Claimants are assessed ten percent (10%) of the forum fees, \$210.00. Claimant previously paid \$1,250.00 and is entitled to a refund in the amount of \$1,040.00.
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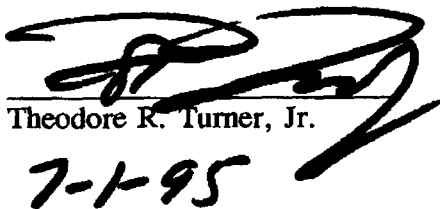
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Concurring Arbitrator's Signature


Theodore R. Turner, Jr.
7-1-95

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