

NASD AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Robert Thomas Securities, Inc.

and

Case Number

94-00142

Name of Respondent

Michael E. Murphy

REPRESENTATION OF PARTIES

For Robert Thomas Securities, Inc. ("Claimant") appeared Joseph A. Vallo, Esq., a sole practitioner, located in New York, New York.

For Michael E. Murphy ("Respondent") appeared James M. Reilly, Esq., of Herzog, Engstrom & Koplovitz, P.C., located in Albany, New York.

CASE INFORMATION

Claimant filed the Statement of Claim on January 14, 1994.

Claimant signed the Uniform Submission Agreement on January 7, 1994.

Respondent filed the Statement of Answer and Counterclaim on April 28, 1994.

Respondent signed the Uniform Submission Agreement on April 28, 1994.

HEARING INFORMATION

Pre-Hearing Conference: September 18, 1997 One Session

Hearing Dates: August 13, 1998 Two Sessions

The hearings were held at the NASD Regulation, Inc., located in New York, New York.

CASE SUMMARY

According to the Statement of Claim, Respondent, a former sales associate of Claimant, failed to pay commissions owed to the First National Bank of Scotia ("the Bank"). Claimant alleged that it paid commissions to the Bank on behalf of Respondent and that Claimant is now subrogated to the Bank's rights. Claimant alleged that Respondent owned and operated a branch

office of Respondent at the Bank. Pursuant to the parties' agreement, Claimant alleged that the Bank was to receive a percentage of the commissions generated by the registered representatives working for Respondent. Claimant alleged that when the Bank learned that it had not been paid its share of the commissions, the Bank demanded that Claimant and Respondent pay the monies owed. Claimant alleged that when Respondent failed to offer an explanation for why he should not pay over the portion of the commissions demanded by the Bank, Claimant settled the Bank's claim by paying the Bank the sum of \$21,988.78. Claimant alleged that it became subrogated to the Bank's rights. Claimant further alleged that it has demanded payment from Respondent, however, Respondent and that he has failed to pay this obligation.

Respondent denied the allegations of wrongdoing set forth in the Statement of Claim and asserted a counterclaim against Claimant. Respondent maintained that a written agreement stating that the Bank was to receive a percentage of the commissions generated by the sale of investments to customers did exist. However, Respondent maintained that the agreement stated that the commission only related to customers who were "introduced by the bank." Accordingly, Respondent maintained that the Bank was not entitled to a percentage of any business done by the office. Respondent also maintained that he advised the Bank of this fact when the Bank attempted to collect a percentage of every commission. Respondent maintained that Claimant was also advised of this fact. Respondent asserted that because of Claimant's threats, intimidating tactics and NASD filings he has lost a substantial amount of business.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in the amount of \$21,988.78.
2. Attorneys' fees and cost.

Respondent requested:

1. Compensatory damages in the amount of \$165,000.00.
2. Attorneys' fees and costs.
3. Removal of this issue from his U-4.

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 NASD Regulation, Inc. Office of Dispute Resolution.

The Panel was advised during the hearing that the Respondent withdrew with prejudice his counterclaim.

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 Statement of Claim is dismissed in its entirety.
2. Claimant's request for attorney fees and cost is denied, except as forum fees are provided for below.
3. Respondents requests for expungement of his U-4 and complete mailing list of the brokerage clients is denied.
4. Any other request not specified herein are denied.

FORUM FEES

Pursuant to Rule 10332 of the NASD Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$500.00 filing fee deposited by the Claimant.

The arbitrators have assessed the following forum fees:

1 Pre-Hearing Conference (Full Panel)	x	\$750.00	=	\$ 750.00
2 Hearing Sessions	x	\$750.00	=	<u>\$1,500.00</u>
Total Forum Fees				\$2,250.00
Minus Claimant's Hearing Session Deposit				<u>(\$ 600.00)</u>
Outstanding Balance				\$1,650.00

Respondent has been assessed \$2,250.00 representing the total amount of forum fees assessed. Claimant previously deposited \$600.00 with NASD Regulation, Inc. Therefore, Respondent shall pay to NASD Regulation, Inc., \$1,650.00 in satisfaction of outstanding forum fees and shall reimburse Claimant its \$600.00 hearing session deposit.

Fees are payable to NASD Regulation, Inc.

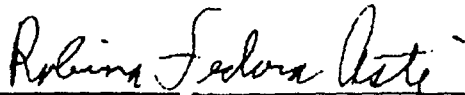
NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 94-0142
Award Page 5 of

ARBITRATION PANEL

Robina Fedora Asti - Industry Chairperson
Jodie-Beth H. Galos - Industry Panelist
Josef E. Windbiel - Industry Panelist

ARBITRATOR'S SIGNATURE

I, Robina Fedora Asti, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Robina Fedora Asti
Industry Chairperson

Date Decision Served by NASD Regulation, Inc.:

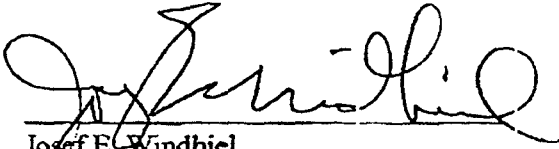


ARBITRATION PANEL

Robina Fedora Asti - Industry Chairperson
Jodie-Beth H. Galos - Industry Panelist
Josef E. Windbiel - Industry Panelist

ARBITRATOR'S SIGNATURE

I, Josef E. Windbiel, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Josef E. Windbiel
Industry Panelist

Date Decision Served by NASD Regulation, Inc.:

October 26, 1998