

**NATIONAL ASSOCIATION OF SECURITIES DEALERS  
AWARD**

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In the matter of the Arbitration Between

Tony DeMarco  
Nancy DeMarco

Claimants

NASD Arbitration  
No. 94-00786

v.

Shearson Lehman Brothers  
Mark Buckman

Respondents

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**REPRESENTATION**

For Claimant: James A. Testa, Esq., Testa & Grady, Vista, California

For Respondents: Ellen Slipp, Esq., Smith Barney Inc., New York, New York

**CASE INFORMATION**

Statement of Claim filed: March 1, 1994

Claimants' Submission Agreement signed: February 25, 1994

Joint Statement of Answer filed: June 8, 1994

Respondents' Submission Agreements signed:  
Shearson Lehman: June 7, 1994  
Mark Buckman: March 24, 1995

**HEARING INFORMATION**

The hearing was held on March 24, 1995, in San Diego, California, and lasted 2 sessions.

**CASE SUMMARY**

Claimants alleged misrepresentation, fraud and breach of fiduciary duty in connection with their investments in the common stock of Callaway Golf and Cascade International.

Respondents denied the allegations of wrongdoing. Respondents asserted that Claimants made their own decisions to buy and sell after full disclosure of all particulars, and that any losses suffered by Claimants are the result of market forces rather than the actions of Respondents.

due in full at the termination of Respondent's employment with Claimant. Claimant also alleged that Respondent received an advance on his wages (Advance Compensation Agreement) in the amount of Seventy Nine Thousand Three Hundred and Seventy Three dollars (\$79,373.00) which was to be repaid over four (4) years which also became due in full at the termination of Respondent's employment.

Respondent alleged that the Promissory Note and Advance Compensation Agreement were unenforceable. Respondent filed a counterclaim and alleged that Claimant breached the original employment agreement.

Claimant denied all allegations of breach of employment contract.

### **RELIEF REQUESTED**

Claimant requested: repayment by Respondent in the amount of One Hundred Seventy Nine Thousand Three Hundred Seventy Three Dollars (\$179,373.00), interest, attorney's fees, and any other relief to which it is entitled.

Respondent requested: a declaration that Respondent was not liable under the Promissory Note and Advance Compensation Agreement, attorney's fees, costs and such other relief as the panel may deem appropriate.

### **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 be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

### **AWARD**

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

1. Respondent, Rosen is found liable and shall pay to the Claimant the amount of \$128,386.97, inclusive of interest.
2. Claimant's request for attorney's fees is denied.
3. Claimant/Counter-Respondent is found not liable on the counterclaim and, therefore, all claims against it are hereby dismissed.
4. Respondent/Counter-Claimant's request for attorney's fees is denied.

### **OTHER**

1. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

### **FORUM FEES**

1. Pursuant to Section 44c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,000.00 (4 sessions x \$750.00).
2. Claimant is hereby assessed \$600.00, for which the NASD shall retain \$750.00 of the previously deposited \$750.00 and Respondent shall refund \$150.00 to the Claimant.
3. Respondent is hereby assessed \$2,400.00, for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof, leaving a balance due to the NASD of \$1,400.00 payable to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fees of \$500.00 paid by the Claimant and \$500.00 paid by the Respondents.

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

#### **Concurring Arbitrators' Signatures**

Name

Public/Industry

/s/  
L. Matthew Byrd, Esq.

Industry/Chairman

/s/  
Samuel M. Niden

Industry/Panelist

/s/  
James C. Noice

Industry/Panelist

Date of Decision: July 28, 1994