

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

Name of Claimant(s)

Comprehensive Capital Corporation

94-00798

Name of Respondent(s)

Louis Charles Miceli, Jr.

**REPRESENTATION**

For Claimant Comprehensive Capital Corporation: Steven V. Kevorkian, Chief Financial Officer, Comprehensive Capital Corporation.

The Respondent appeared pro se.

**CASE INFORMATION**

Statement of Claim filed: February 28, 1994.

Claimant's Submission Agreement signed on: March 22, 1996.

Additional Submission for Respondent filed on: August 15, 1994.

Statement of Answer filed by Respondent Louis Charles Miceli, Jr. on: July 27, 1994

Respondent Louis Charles Miceli, Jr.'s Submission Agreement signed on: June 23, 1994.

**HEARING INFORMATION**

Hearing Dates/Sessions:      December 1, 1995 - One Session  
January 24, 1996 - One Session

Hearing Location:      NASD offices located in New York City, New York.

**CASE SUMMARY**

Claimant alleged that on August 25, 1993 Respondent entered into an Employment Agreement in the capacity of Account Executive and as part of his Employment Agreement he was extended a loan of \$15,000.00 (interest free) which was to have been repaid on or before November 25, 1993. Claimant further alleged the Respondent was employed as an account executive with Claimant from August 26, 1993 through February 4, 1994 and the remaining balance of the loan is \$7,124.25 and to date the Respondent has made no attempts to respond to their requests concerning the debt.

Respondent maintained that there is no remaining balance on the Note as Claimant breached its employment agreement and as a result, the Respondent has been damaged in his business, his ability to generate commission income and his ability to repay the Note, which expressly was understood and agreed would be repaid from commissions generated by Respondent. The Respondent further maintained that Claimant made material misrepresentations concerning Comprehensive Capital Corporation its business, products and principals including the following:

- a. Claimant's U-5 of Respondent indicates that Mr. Miceli was terminated for lack of production, notwithstanding the fact that this is not a ground for termination as provided in the employment agreement.
- b. Respondent observed while employed by Claimant that John Kevorkian had a private office that he shared with his wife, who acted as the trader and was registered as such for Claimant. Respondent observed that John Kevorkian gave orders and instructions to his wife and to the firm's manager, Ron Brodis, despite the fact that Respondent was told that John Kevorkian was "just a customer who had nothing to do with the operations of Comprehensive Capital."
- c. Respondent challenged this misrepresentation made to him by Ron Brodis when Respondent discovered that John Kevorkian was reviewing all of Mr. Miceli's customer accounts, commission runs, and all trades by his customers, and Mr. Kevorkian vetoed and/or refused to process orders for purchases by Mr. Miceli's customers on various underwritings in which Claimant participated. The commissions that would have been generated by Mr. Miceli in such vetoed trades were in an amount that would have permitted Mr. Miceli to repay the Note in full, and would have further provided additional income to Respondent. Claimant permitted Mr. Kevorkian to so act, despite the fact that John Kevorkian was not registered with the NASD, had no "official" position with Claimant, and had no legal authority to act in any capacity at any NASD firm.
- d. Respondent alleges that by permitting Mr. Kevorkian access to and authority over Mr. Miceli's customer accounts and trades that Claimant breached paragraph 2(c) of the employment agreement.
- e. Claimant damaged Respondent by permitting John Kevorkian to control all orders or trades for an underwritten offering by Claimant, Med-Waste, and control allocations among registered representatives within the firm, and defrauded Respondent out of 27,500 of the underwriter warrants that Respondent earned by virtue of the confirmed orders through Respondent in the Med-Waste underwriting.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The hearing was originally scheduled for December 1, 1995 and the Respondent requested an adjournment prior to the hearing date on November 29, 1995 which was denied. Thereafter, on December 1, 1995 Mr. Miceli did not attend the hearing; therefore, the arbitrator decided to reschedule the hearing to a later date so that Mr. Miceli could be present. The NASD attempted to contact Mr. Miceli to reschedule this matter. The hearing was rescheduled for January 24, 1996 and a confirmation of the hearing date was sent to all parties on December 19, 1995. The Respondent did not attend the hearing and the arbitrator determined that Mr. Miceli had notice of the hearing in accordance with Section 26 of the Code of Arbitration Procedure and proceeded with the hearing in Mr. Miceli's absence. A letter was forwarded to the NASD on January 23, 1996 at 5:54 p.m. however, the staff person assigned to the case did not receive it until after the hearing on January 24, 1996 had concluded. The letter from Mr. Miceli which requested an adjournment of the January 24, 1996 hearing date and the Claimant's response dated January 26, 1996 were forwarded to the arbitrator for his review. The arbitrator determined not to reopen the hearing in this matter.

### **RELIEF REQUESTED**

Claimant requested damages in the sum of \$7,124.25 plus interest at the legal rate of nine (9%) percent per annum from November 25, 1993 until such date the debt is satisfied in full. Claimant further requested that they be awarded the cost of the proceeding.

The Respondent did not make any specific request for relief.

### **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. The Respondent Louis C. Miceli, Jr. be and hereby is liable and shall pay to the Claimant the sum of \$7,124.25 plus simple interest at the rate of 9% per annum from February 2, 1994 until date of payment of the award.
2. The Respondent Louis C. Miceli, Jr. be and hereby is liable and shall pay to the Claimant the sum of \$575.00 to reimburse them for their fees previously paid to the NASD.

### **FORUM FEES**

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

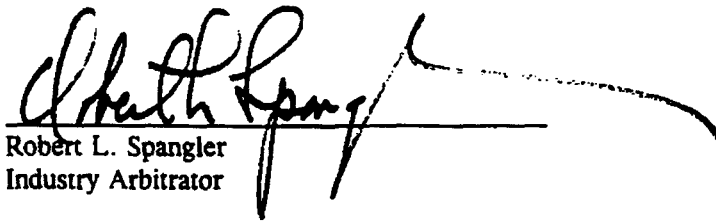
claim filing fee	\$ 500.00
hearing session fees: (2 x \$300.00) =	\$ 600.00
Total Fees:	\$1,100.00

The undersigned arbitrator has determined that Mr. Miceli shall bear the costs of the proceeding.

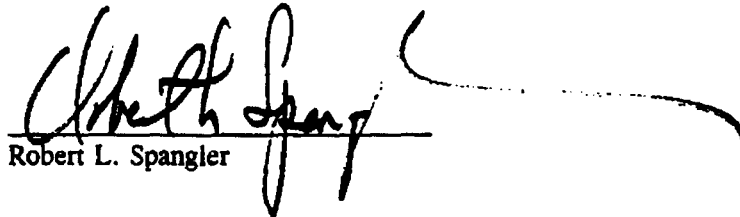
1. The Respondent Louis C. Miceli, Jr. is liable for \$1,100.00. The Claimant previously paid \$575.00. Therefore, the Respondent owes a balance of \$525.00.

In addition, the Respondent is liable and shall pay to the NASD the sum of \$300.00 representing the adjournment fee for the hearing scheduled for December 1, 1995.

**ARBITRATOR SIGNATURE**

  
Robert L. Spangler  
Industry Arbitrator

I, Robert L. Spangler, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

  
Robert L. Spangler

Date of Decision: February 25, 1996