

CORRECTED N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Thomas E. Waite

94-01087

Name of Respondents

Collner, Higgins & Andersen, Inc.

REPRESENTATION

For Claimant, Thomas E. Waite, ("Waite"): Victor L. Chapman of Barrett, Chapman & Ruta, Orlando, Florida.

For Respondent, Collner, Higgins & Andersen, Inc. ("CHA"): Harry Christopher Goplerud, Esq of Honigman, Miller Schwartz and Cohn, Tampa, Florida.

CASE INFORMATION

Statement of Claim filed: March 22, 1994. Claimant's Submission Agreement signed: March 14, 1995.

Respondent's Statement of Answer filed: July 13, 1994. Respondent's Submission Agreement signed: July 11, 1994 by Robert E. Anderson, Jr. on behalf of CHA.

On January 27, 1995, Respondent filed its Counterclaim to which Claimant filed his Answer on February 7, 1995.

HEARING INFORMATION

On April 21, 1995 in Fort Lauderdale, Florida, a prehearing conference lasting 1 session was conducted, via telephone conference call, with an arbitrator presiding.

On May 8 and 9, 1995 in Fort Lauderdale, Florida a hearing lasting 4 sessions was conducted.

CASE SUMMARY

Claimant alleged that he was employed by Respondent and executed a written employment agreement; that he performed consulting services for a publicly traded company for which Respondent received unrestricted shares of stock in that publicly traded company; and, that he is entitled to be paid for the consulting services pursuant to the formula stated in his written employment agreement.

Respondent denied all allegations of wrongdoing and alleged that there was an oral agreement between Waite and CHA to divide any compensation received from certain Tellus Industries shareholders with respect to any investment banking or consulting services, 60% for CHA and 40% for Waite; denied that the February 1993 Business Agreement governed the issue of compensation concerning investment banking and consulting services; and denied that Waite had proven that he was injured, let alone the amount of injury suffered due to any alleged wrongdoing on the part of CHA.

Respondent, in its Counterclaim, alleged that CHA and Waite stipulated that CHA was to be awarded reasonable attorney's fees expended by CHA to dissolve an improvidently granted *ex parte* temporary restraining order on behalf of Waite; and that, in addition to the reasonable attorney's fees it had suffered, CHA suffered damages in excess of \$80,000.00 as a direct and proximate result of said improvidently granted *ex parte* temporary restraining order.

Claimant/Counter Respondent, Waite, in his Answer to the Counterclaim, alleged that he was to be paid 85% of the Tellus Industry, Inc. shares which were paid to CHA for consulting; that there was not an oral agreement that Waite was to receive only 40%, one half of which was to be paid to Lee Tawers; or that the remaining 60% would be paid to CHA.

RELIEF REQUESTED

Claimant requested approximately \$388,000.00 in damages, reflecting the value of the shares of stock to which he was entitled as of the date of termination of his employment.

Respondent requested dismissal of the Claim. In its Counterclaim, CHA requested payment of the attorney's fees it was required to expend to dissolve the injunction plus damages of \$80,000.00.

Claimant/Counter Respondent requested dismissal of the Counterclaim, attorney's fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

1. Respondent moved for involuntary dismissal of the Claim at the close of Claimant's case. The motion was denied by the Panel.

2. 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 the NASD.

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. Respondent, CHA, is found liable and shall pay to the Claimant the amount of \$15,000.00, inclusive of interest. This amount is to be set off against the amount awarded to Respondent for its Counterclaim.
2. Claimant's request for attorney's fees and costs is denied.
3. Claimant/Counter Respondent, Waite, is found liable and shall pay to the Respondent/Counter Claimant, the amount of \$61,500.00, less the \$15,000.00 awarded above as a set off, for a net award to Respondent/Counter Claimant of \$46,500.00, inclusive of interest.
4. Claimant/Counter Respondent shall pay interest on this Award which shall begin to accrue on the date of this Award.
5. Respondent's request for attorney's fees and costs is denied in connection with the instant arbitration.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

FORUM FEES

1. Pursuant to Section 44(c) of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount \$2,700.00 (1 prehearing conference x \$300.00 plus 4 sessions x \$600.00).
2. Claimant/Counter Respondent is hereby assessed \$2,700.00, for which the NASD shall retain the \$600.00 previously deposited in partial satisfaction thereof leaving a balance of \$2,100.00. Of that amount, Claimant/Counter Respondent shall pay \$750.00 directly to Respondent/Counter Claimant, in reimbursement for the hearing session deposit made by CHA, and \$1,350.00 to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the non-refundable filing fees of \$500.00 paid by the Claimant/Counter Respondent and \$500.00 paid by the Respondent/Counter Claimant.
4. The NASD shall retain the session deposit of \$750.00 paid by Respondent/Counter Claimant which shall be reimbursed as set forth above.

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

Concurring Arbitrators' Signatures

/s/
Gary W. Pollack, Esq.

Industry

/s/
Richard M. Kowalske

Industry

/s/
David P. Wardwell

Industry

Date of Decision: 6/1/95