

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Rodman & Renshaw, Inc.,

Claimant and Counter-Respondent,

and

No. 94-01143

Steven A. Rothstein,

Respondent and Counter-Claimant.

REPRESENTATION OF PARTIES

For Claimant and Counter-Respondent: Rodman & Renshaw, Inc. ("Rodman") was represented by J. Patrick Herald, Esq. of Baker & McKenzie, located in Chicago, Illinois.

For Respondent and Counter-Claimant: Steven A. Rothstein ("Rothstein") was originally represented by Andrew B. David, Esq. of Sugar, Friedberg & Felsenthal, located in Chicago, Illinois, and subsequently by Martin Karlinsky, Esq. of Cahmy, Karlinsky & Stein, LLP, located in New York, New York.

CASE INFORMATION

Rodman's Statement of Claim was filed on: March 24, 1994.

Rodman's Answer to the Counterclaim was filed on: July 10, 1997.

Rodman's Submission Agreement was signed by Joseph P. Shanahan, President of Rodman & Renshaw, Inc., on: March 23, 1994.

Rothstein's Statement of Answer was filed on: June 20, 1994.

Rothstein's Counterclaim was filed on: June 23, 1997.

Rothstein did not submit a properly executed Submission Agreement.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on: August 5, 1997 for two (2) sessions; and
August 6, 1997 for two (2) sessions.

The hearing was held in: Chicago, Illinois.

CASE SUMMARY

Rodman alleged that Rothstein is liable for monetary advances made pursuant to his employment agreement with Rodman and for sums due as a result of his breach of two promissory notes held by Rodman. Rodman asserted that Rothstein voluntarily resigned from Rodman on March 1, 1994 after working with Rodman for fourteen months, and owes Rodman \$97,769.12, representing the difference between his advances and earned investment banking fees. Rodman further stated that, as part of its employment agreement with Rothstein and in return for loans made to him, Rothstein made and delivered to Rodman two promissory notes in writing. According to Rodman, the first note was for the amount of \$100,000, which, pursuant to the employment agreement, was to be reduced in the event Rothstein resigned within the first thirty-six months of his employment by the ratio of the number of months he worked with Rodman to thirty-six. Rodman added that the second note was for \$200,000, which represented funds Rothstein was to use to purchase stock in Rodman at book value, and which called for repayment of the principal sum of \$200,000 at the rate of six percent per annum. Rodman asserted that Rothstein did not purchase the Rodman stock as stipulated in the employment agreement and has refused to pay his obligations under either of the two notes.

Rothstein denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on his part. Rothstein stated that Rodman never informed him of its belief that he was obligated to repay any advances. Rothstein admitted executing two promissory notes in favor of Rodman, but affirmatively stated that he was fraudulently induced into executing both the notes and the employment agreement.

Rothstein alleged in his Counterclaim that Rodman breached contractual obligations and duties. Rothstein asserted that under the employment contract between the parties and pursuant to supplementary oral agreements relating to compensation, he was promised commissions, fees, and stock options for work he performed that Rodman has failed to pay or convey to him. Rothstein added that substantial amounts of money are owed by Rodman to him in reimbursement for out-of-pocket business expenses he incurred in the initial public offering of a company known as Sigmatron, expenses for which Rodman itself received reimbursement from Sigmatron, but failed to account or pay to Rothstein. Rothstein finally asserted that Rodman induced him into its employment with false promises, failed to act towards him in good faith, and constructively discharged him by withholding all his compensation during the final months of his employment. According to Rothstein, he has been damaged beyond any debt owed Rodman in an amount well in excess of \$1 million.

Rodman denied the allegations set forth in the Counterclaim as they relate to any wrongdoing on its part. Rodman also asserted the following affirmative defenses: (1) the Counterclaim fails to state a claim upon which relief can be granted against Rodman; (2) the written agreement between Rodman and Rothstein expressly states that it embodies the entire understanding concerning Rothstein's employment with Rodman, which precludes all of Rothstein's claims that are based on supposed understandings not found in the written contract and those that are inconsistent with it; (3) the alleged oral agreements claimed by Rothstein would be barred by the Illinois Statute of Frauds; and (4) the Counterclaim fails to allege damages with sufficient specificity to enable Rodman to determine how Rothstein's claim is computed, and Rothstein fails to allege facts that, if proven, would establish the requisite causal link between his alleged injury and Rodman's alleged conduct.

RELIEF REQUESTED

Rodman requested an award for compensatory damages of \$97,769.12 plus interest for the advances; a finding that Rothstein is obligated to perform under the first promissory note, and compensatory damages thereon of \$61,212.12 plus interest, expenses, late charges, and costs incurred in this action and attorneys' fees; and a finding that Rothstein is obligated to perform his obligations under the second note, and compensatory damages thereon of \$200,000 plus interest, its expenses, costs incurred in this action, and attorneys' fees. Rodman also requested that Rothstein's Counterclaim be denied in its entirety.

Rothstein requested that the claims asserted against him be dismissed in their entirety and that he be awarded his costs and expenses of this action. On his Counterclaim, Rothstein requested appropriate damages.

OTHER ISSUES CONSIDERED AND DECIDED

Rothstein did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration, but is required to submit to arbitration pursuant to § 10201 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Rothstein had also filed a claim against Rodman and others in the NYSE arbitration forum. Rodman filed a complaint for declaratory relief in the Circuit Court of Cook County, No. 94 CH 7871 in order to resolve the parties' dispute over the forum in which their claims should be adjudicated. Thereafter, the parties resolved their differences and agreed to proceed with their claims consolidated before the NASD Regulation, Inc. Office of Dispute Resolution. Pursuant to this agreement, Rothstein agreed to voluntarily withdraw the statement of claim he filed with the NYSE and to file the same claim as a counterclaim in this matter.

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 Regulation, Inc. Office of Dispute Resolution.

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/Counter-Claimant Steven A. Rothstein is liable for and shall pay to Claimant/Counter-Respondent Rodman & Renshaw, Inc. the sum of One Hundred Ninety Thousand, Two Hundred Fifty Nine Dollars and Twenty Nine Cents (\$190,259.29) as actual damages and interest;
2. Claimant/Counter-Respondent Rodman & Renshaw, Inc. is liable for and shall pay to Respondent/Counter-Claimant Steven A. Rothstein the sum of Six Hundred Seven Thousand, Seven Hundred Ninety Four Dollars (\$607,794.00) in actual damages;
3. Pursuant to the terms of this decision, Claimant/Counter-Respondent Rodman & Renshaw, Inc. shall pay to Respondent/Counter-Claimant Steven A. Rothstein the amount of Four Hundred Seventeen Thousand, Five Hundred Thirty Four Dollars and Seventy Nine Cents (\$417,534.71) representing Rothstein's total damages minus Rodman & Renshaw's total damages;
4. The claims for punitive damages are dismissed and denied;
5. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
6. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to § 10205(b) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed: Four (4) hearing sessions x \$1,000.00 per session = \$4,000.00.

Pursuant to § 10205(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee of \$500 and shall **retain** as forum fees the hearing session deposit of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution

by Rodman & Renshaw, Inc.. Rodman & Renshaw, Inc. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees of \$1,250.00 (= ½\$4,000 total forum fees - \$750 hearing session deposit). In addition, Claimant/Counter-Respondent Rodman & Renshaw, Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$200.00 as the member surcharge required under Section 10333 of the Code of Arbitration Procedure.

The NASD Regulation, Inc. Office of Dispute Resolution shall **retain** postponement fees of \$875.00 previously paid to the NASD Regulation, Inc. Office of Dispute Resolution by Rodman & Renshaw, Inc. The NASD Regulation, Inc. Office of Dispute Resolution shall also **retain** postponement fees of \$875.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Steven A. Rothstein.

Respondent/Counter-Claimant Steven A. Rothstein is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees of \$2,000 (= ½\$4,000 total forum fees). In addition, Respondent/Counter-Claimant Steven A. Rothstein is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$500.00 for the claim filing fee, representing the total sum of \$2,500.00 due from Rothstein.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures

/s/ Michael Steinberg, Esq.
Michael Steinberg, Esq.
Chairperson
Industry Arbitrator

August 27, 1997
Dated:

/s/ Joy Pava Shulruff, Esq.
Joy Pava Shulruff, Esq.
Industry Arbitrator

September 2, 1997
Dated:

/s/ Howard A. Buchler
Howard A. Buchler
Industry Arbitrator

August 27, 1997
Dated: