

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

Name of Claimant

Duke & Company, Inc.

94-01440

Name of Respondent

Lawrence Rosenberg

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**REPRESENTATION**

For claimant Duke & Company ("claimant") appeared Charles J. Hecht, Esq., of the offices of Hecht & Goldston located in New York, New York.

Respondent Lawrence Rosenberg ("respondent") did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on April 14, 1994. Claimant's Submission Agreement was signed on April 13, 1994.

Respondent did not file a Statement of Answer or a Submission Agreement.

**HEARING INFORMATION**

Hearing Dates/Sessions:	May 30, 1995	-	One Session
	September 17, 1996	-	One Session

The hearing was held at the offices of the National Association of Securities Dealers, Inc., located in New York, New York.

**CASE SUMMARY**

Claimant alleged that prior to February 1993, respondent was an officer and director of Elliot Allen & Co., Inc. ("EAC"), a record and beneficial owner of 50% of EAC Class A common

stock and a record and beneficial owner of EAC non-voting Class B common stock. Claimant further alleged that, on March 1, 1993, respondent became the sole holder of EAC's voting stock and, thereafter, caused EAC to change its name to Duke.

Claimant maintained that, in August 1993, it sold 51% of its voting stock to Victor Wang ("Wang") and it also entered into an employment agreement with respondent appointing him as the Chief Executive Officer with full authority and responsibility for the day-to-day operation and management of Duke. Claimant also maintained that, on January 14, 1994, pursuant to a Special Meeting of Shareholders and Directors of Duke, respondent was removed as a director of Duke.

Claimant contended that, prior to his removal, respondent took advances and that, at the time of his oral resignation, he had aggregate net advances of \$21,291.61 which had not been repaid. Claimant further contended that without the knowledge and consent of EAC, Gordon Rausser ("Rausser") transferred \$150,000.00 to a personal account of respondent's, ostensibly for the purpose of purchasing shares of EAC Class B common stock. Claimant further alleged that respondent neither caused the minute books nor stock record books to reflect such share issuance to Rausser, nor accounted to EAC for the proceeds thereof. Claimant maintained that respondent used these funds towards the purchase of EAC voting stock for his own account.

Claimant further maintained that respondent received an additional \$95,000.00 from Rausser apparently for the purchase of Class B non-voting stock. Claimant alleged that respondent purported to grant Rausser certain rights and attempted to obligate EAC (or its successors) to repurchase Rausser's equity for \$300,000.00. According to claimant, no corporate minutes could be located authorizing EAC or Duke to be bound by or to enter into this agreement. Moreover, claimant maintained that no part of the \$245,000.00 transferred by Rausser for the purchase of stock was received by EAC, nor was it aware that Rausser had wired these funds for the purchase of its non-voting stock to respondent's personal account.

Claimant further alleged that Ameralia Corporation ("Ameralia") transferred 100,000 Ameralia freely trading shares at nominal or no consideration to respondent as consideration for respondent handling the sale of certain Ameralia shares and causing Duke to make a market in Ameralia's securities. According to claimant, this payment to respondent, if made, was done without the knowledge, consent or ratification of Duke. Claimant asserted that Ameralia has alleged that respondent's conduct has damaged it and certain of its shareholders.

Claimant also alleged that respondent, while still an officer and director of Duke, solicited Duke employees to become associated with his new brokerage firm. Claimant further alleged that, after his resignation as an officer but while still a director, respondent continued to solicit existing and former employees of Duke to join him in his new brokerage firm. According to claimant, at the time of these solicitations, respondent was a party to an employment agreement prohibiting him from hiring existing and former Duke employees. Furthermore, claimant alleged that, during these solicitations, respondent made false, misleading and disparaging statements about Wang to Duke's registered representatives and that, as a result, some valuable registered representatives left Duke for other brokerage firms.

Claimant also alleged that respondent tortiously interfered with Duke's contractual rights and thereby breached his fiduciary duty as an officer and director of Duke. Claimant maintained that it was acting as an investment banker for U.S. Diagnostic Laboratories, Inc. ("USDL") and that it assisted USDL in two private placements. Claimant contended that at respondent's suggestion and/or encouragement USDL paid the commissions due to Duke directly to the brokers. In addition, claimant contended that, at the behest and recommendation of respondent, USDL breached its agreement with Duke, pursuant to which Duke was to act as the underwriter of USDL's initial public offering.

### **RELIEF REQUESTED**

Claimants requested the following relief:

1. \$21,291.61 plus interest from December 2, 1993;
2. An accounting for the \$245,000.00 transmitted by Gordon Rausser to Rosenberg's personal account at Chemical Bank and, if appropriate, an award to Duke of \$245,000.00 plus interest on \$150,000.00 from February 18, 1993 and interest of \$95,000.00 from March 23, 1993;
3. Indemnification for any award or judgment obtained by Gordon Rausser, individually, or for whom he was acting, plus Duke's legal fees and disbursements incurred in any such arbitration and/or judicial proceeding;
4. Indemnification for any damages incurred, including legal fees and disbursements for any other actions of Rosenberg as a controlling stockholder, as an officer and/or director of Duke as discussed in section III of the Statement of Claim;
5. An award of \$1,000,000.00 by reason of Rosenberg's breach of his employment agreement;
6. An award of at least \$970,000.00 as a result of Rosenberg's tortious interference and/or breach of his fiduciary duties in encouraging USDL to violate its agreement with Duke; and
7. Such other and further relief in favor of Duke as the arbitrators deem just and 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 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.

The arbitration panel made the following rulings concerning respondent Rosenberg who did not

**file an executed Submission Agreement or Statement of Claim and did not appear at the hearing in this matter without obtaining an adjournment/postponement thereof:**

1. Pursuant to Section 1 of the Code of Arbitration Procedure ("Code"), the panel found subject matter jurisdiction over the entire controversy.
2. The panel found that respondent was a person associated with a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over respondent pursuant to Section 12 of the Code.
3. In view of (2) above, the panel found that respondent was required to file a Statement of Answer and a properly executed Submission Agreement pursuant to Section 25(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon respondent pursuant to Section 25(a) of the Code.
4. In addition, in accordance with Sections 21, 26 and 29 of the Code, the panel found that the NASD provided respondent with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel determined to proceed with the hearing without respondent, whose absence was unexcused.

#### **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. With respect to claimant's claim for failure to repay advances, respondent be and hereby is liable and shall pay claimant the sum of \$21,291.61 plus interest of 9% from December 2, 1993 until payment.
2. Respondent be and hereby is liable and shall pay claimant the sum of \$300,000.00 plus interest of 9% from March 1, 1995 until payment as indemnification for the Rausser award.
3. Respondent be and hereby is liable and shall pay claimant the sum of \$130,000.00 plus interest of 9% from November 1, 1995 until payment as indemnification for claimant's settlement with Ameralia Corp.
4. Claimant's claim for breach of employment agreement is hereby denied.
5. With respect to claimant's claim for tortious interference and/or breach of fiduciary duties with respect to USDL, respondent be and hereby is liable and shall pay claimant the sum of \$150,000.00 plus interest of 9% percent from January 1, 1994 until payment.
6. Respondent be and hereby is liable and shall pay claimant the sum of

**\$75,000.00, representing costs, including attorneys' fees.**

**FORUM FEES**

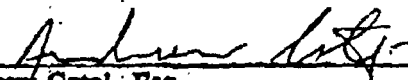
Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 non-refundable filing fee previously submitted by claimant and have assessed the following forum fees:

2 hearing sessions x \$1,000.00 = \$2,000.00

1. Claimant be and hereby is liable for the sum of \$1,000.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$1,000.00 with the NASD and, therefore, claimant owes nothing to the NASD.
2. Respondent be and hereby is liable and shall pay the sum of \$1,000.00, representing one-half of the total amount of forum fees assessed.

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

**Arbitrators' Signatures**

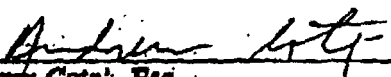
  
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Andrew Cote', Esq.  
Chairperson-Industry Arbitrator

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Edward Buckley  
Industry Arbitrator

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Joseph J. Cassidy  
Industry Arbitrator

Date of decision: January 7, 1997

I, Andrew Cote', Esq., 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.

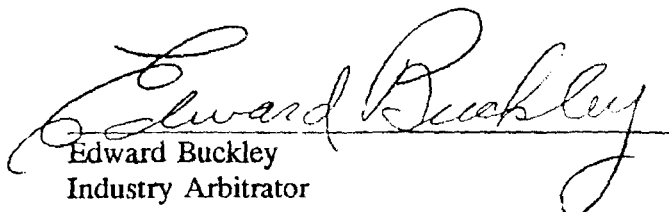
  
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Andrew Cote', Esq.

Arbitrators' Signatures

\_\_\_\_\_  
Andrew Cote', Esq.  
Chairperson-Industry Arbitrator

December 16, 1996

Britta Hickmann

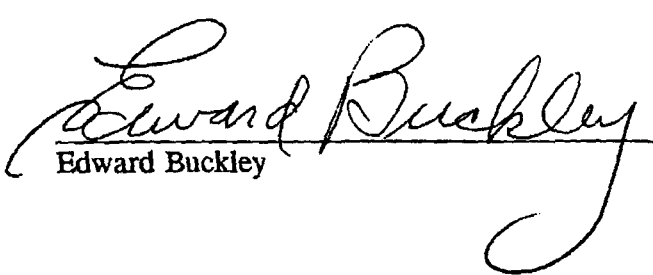
  
Edward Buckley  
Industry Arbitrator

BRITTA HEIZMANN  
Notary Public, State of New York  
No. 01HE4790807  
Qualified in Queens County  
Commission Expires Dec. 31, 97

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Joseph J. Cassidy  
Industry Arbitrator

Date of decision: January 7, 1997

I, **Edward Buckley**, 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.

  
Edward Buckley

December 16, 1996

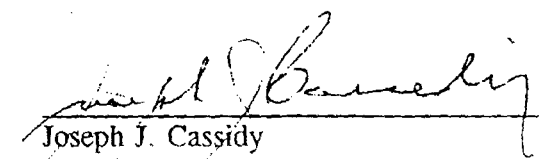
Britta Hickmann

BRITTA HEIZMANN  
Notary Public, State of New York  
No. 01HE4790807  
Qualified in Queens County  
Commission Expires Dec. 31, 97

Arbitrators' Signatures

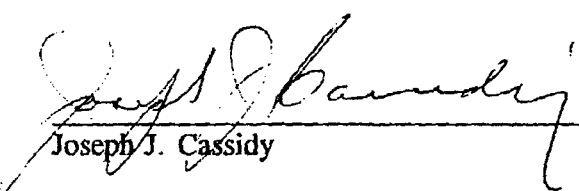
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Andrew Cote', Esq.  
Chairperson-Industry Arbitrator

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Edward Buckley  
Industry Arbitrator

  
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Joseph J. Cassidy  
Industry Arbitrator

Date of decision: January 7, 1997

I, **Joseph J. Cassidy, Esq.**, 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.

  
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Joseph J. Cassidy