

N.A.S.D.R. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the matter of the Arbitration Between

Name of Claimant

Charles Sims, Trustee
For Edwin Oviatt, II

vs.

NASDR Arbitration
No.94-01663

Name of Respondent

S.J. Capital Incorporated
G. Stephen Jizmagian

REPRESENTATION

For Claimant: Patrick Baldwin, Esq., Menlo Park, California

For Respondents: William Lukens, Esq., and Thomas F. Chan, Esq., Lukens and Drummond,
San Francisco, California

CASE INFORMATION

Statement of Claim filed: May 5, 1994

Claimant's Submission Agreement signed: May 28, 1996

Joint Statement of Answer and Counterclaim filed: October 19, 1994

Respondents' Submission Agreements signed: October 19, 1994

Answer to Counterclaim filed: November 11, 1994

HEARING INFORMATION

Pre-hearing telephone conferences were held as follows:

April 27, 1995	-	1 session
May 2, 1995	-	1 session
October 9, 1995	-	1 session

A motion hearing lasting 1 session was held August 14, 1996.

The evidentiary hearing was held in San Francisco, California, as follows:

September 30, 1996	-	2 sessions
October 1, 1996	-	2 sessions
October 7, 1996	-	1 session

CASE SUMMARY

Claimant alleged commissions due and owing to Edwin Oviatt, II, in connection with Oviatt's employment with Respondent S.J. Capital. Claimant further alleged breach of contract, tortious denial of contract, intentional misrepresentation, conversion, and intentional infliction of emotional distress in connection with the withholding of the commissions.

Respondents denied the allegations of the claim, and asserted that Oviatt had agreed to have part of his accruing commissions withheld by Respondents to defray Respondents' legal costs arising from another arbitration matter in which the parties were involved. Respondents further stated that Oviatt forfeited all claims for relief by failing to perform under the terms and conditions of his representative agreement.

Respondents asserted a counterclaim for unpaid legal fees and expenses incurred in another arbitration pursuant to Oviatt's agreement to indemnify Respondents for their legal costs, as well as for commissions Oviatt earned while registered only with S.J. Capital and using S.J. Capital's facilities.

In response to the counterclaim, Oviatt denied entering an agreement to indemnify Respondents in connection with any arbitration proceeding, and denied the remaining allegations of the counterclaim.

RELIEF REQUESTED

Claimant requested damages of \$50,930.00 plus interest from December, 1989, punitive damages, all trailing commissions paid after October 1996, and dismissal of the counterclaim.

Respondents requested dismissal of the claim and an award on the counterclaim of approximately \$61,156.00 plus costs.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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 NASDR.

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. Respondents are jointly and severally liable for and shall pay to Charles Sims, trustee, the sum of \$13,500.00
2. The claims for interest and punitive damages are denied.
3. Any future trailing commissions paid as a result of sales by Oviatt are to be split 80% to Charles Sims, trustee, and 20% to S.J. Capital.
4. The counterclaim is dismissed.
5. The parties shall each bear their respective costs of arbitration, including attorney's fees.

FORUM FEES

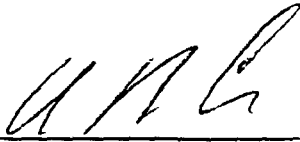
Pursuant to Section 44(c) of the Code of Arbitration Procedure, the NASDR shall retain the \$500 non-refundable filing fee paid on behalf of Claimant, as well as the \$500 non-refundable filing fee paid by Respondents.

Forum fees are to be paid by Respondents, jointly and severally, as follows:

5 sessions @ \$600/session	<u>\$3000.00</u>
----------------------------	------------------

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

Date signed:



Allan B. Currie
Presiding Chairperson
Industry Arbitrator

10/31/96

Thomas W. Borden
Industry Arbitrator

Anne Hennegar
Industry Arbitrator

Date served: 11/08/1996

Date signed:

Allan B. Currie
Presiding Chairperson
Industry Arbitrator

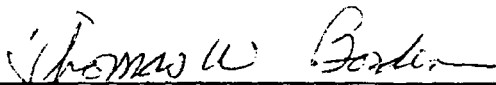
Thomas W. Borden
Industry Arbitrator

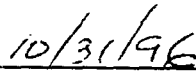
Anne Hennegar
Industry Arbitrator

Date served: 11/08/1996

Date signed:

Allan B. Currie
Presiding Chairperson
Industry Arbitrator


Thomas W. Borden
Industry Arbitrator



Anne Hennegar
Industry Arbitrator

Date served: 11/08/1996