

## **NASD AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Gardner Rich & Company

and

94-01775

Name of Respondent

Beverly A. Pasley

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### **REPRESENTATION OF PARTIES**

Gardner Rich & Company ("**Claimant**") was represented by Michael Wise, Esq., Lawrence, Kamin, Saunders & Uhlenhop, Chicago, Illinois.

Beverly A. Pasley ("**Respondent**") was represented by Deborah England, Esq., San Francisco, California

### **CASE INFORMATION**

The Statement of Claim was filed on or about May 11, 1994. Reply to Counterclaim was filed on or about August 22, 1994. Submission Agreement of Claimant Gardner Rich & Company was signed on May 10, 1994 by Christopher P. Gardner.

Statement of Answer and Counterclaim was filed by Respondent Beverly A. Pasley on or about July 25, 1994. Submission Agreement of Respondent Beverly A. Pasley was signed on July 17, 1994.

### **HEARING INFORMATION**

The hearing was held on Tuesday, June 6, 1995 for two (2) sessions and Wednesday, June 7, 1995 for one (1) session in Chicago, Illinois for a total of three (3) sessions.

### **CASE SUMMARY**

Claimant alleged that Respondent Beverly A. Pasley claims that she had entered into an employment agreement with it and demanded that the firm pay her certain sums of money as compensation or damages due her. Claimant denied that Ms. Pasley entered into any valid employment agreement

and denied that any compensation or damages was due to her. Additionally, Claimant stated that Ms. Pasley had been paid all compensation due to her arising out of her employment with it.

Respondent/Counterclaimant alleged that Gardner Rich & Company had breached its employment agreement with her. Beverly Pasley specifically stated that she had entered into an employment agreement with Gardner Rich & Company wherein she would receive an annual salary of \$60,000, plus 30% commissions for the first six months of her employment. Ms. Pasley further alleged that the terms of the agreement stated that after the first six months of her employment had elapsed, her compensation would become commission only with a monthly draw of \$5,000 which would be repaid out of commission earnings.

### **RELIEF REQUESTED**

Claimant requested that the panel award no damages to Beverly A. Pasley and that she be ordered to pay its' reasonable attorneys' fees, costs and expenses.

Respondent/Counterclaimant requested an award of:

- ◆ general and compensatory damages, including lost wages, both past and future, lost employee benefits, both past and future, and other special and general damages according to proof as allowed by law;
- ◆ damages for mental and emotional distress, according to proof as allowed by law;
- ◆ punitive damages as allowed by law;
- ◆ interest, including pre-judgment at the legal rate;
- ◆ costs;
- ◆ attorneys' fees; and
- ◆ such other and further relief as the Arbitration Panel deems just and proper.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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. Gardner Rich & Company shall be and hereby is liable for and shall pay to Beverly Pasley the sum of **Twenty thousand dollars (\$20,000)**.

2. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter other than those costs and expenses enumerated in the Order dated March 2, 1995.

### **FORUM FEES**

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each prehearing conference, if any. There were sessions three (3) x \$600 = \$1,800 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$500 and shall **retain** as forum fees the hearing session deposit in the amount of \$600 previously deposited with the NASD by the Claimant Gardner Rich & Company. Gardner Rich & Company shall be and hereby is liable for and shall pay to the NASD the sum of \$1,200 as the balance due for forum fees.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$250 and shall **refund** the hearing session deposit in the amount of \$600 previously deposited with the NASD by the Respondent/Counterclaimant Beverly A. Pasley.

Pursuant to §45 of the NASD Code of Arbitration Procedure, Claimant Gardner Rich & Company shall pay to the NASD the non-refundable member surcharge in the amount of \$200. **Fees are payable to the National Association of Securities Dealers, Inc.**

Dated:

/s/ John E. McGovern, Jr., Esq.

John E. McGovern, Jr., Esq.  
Public Arbitrator, Presiding Chair

July 5, 1995

/s/ Jason R. Levine, Esq.

Jason R. Levine, Esq.  
Public Arbitrator

June 28, 1995

/s/ Shirley A. Castle

Shirley A. Castle  
Industry Arbitrator

July 3, 1995