

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Pauli & Company Incorporated,
Claimant,

v.

No. 94-01834

Stephen R. Kovac,
Respondent,

REPRESENTATION OF PARTIES

Pauli & Company Incorporated ("**Claimant**") was represented by Kevin J. Lorenz, Esq., of McMahon, Berger, Hanna, Linihan, Cody & McCarthy, St. Louis, Missouri.

Stephen R. Kovac ("**Respondent**") was represented by Mitchell A. Margo, Esq., of Green, Hoffman & Dankenbring, St. Louis, Missouri, until approximately December of 1995. After that time, Respondent represented himself. Respondent did not appear at the hearing.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about May 10, 1994. Claimant's Submission Agreement was signed on May 10, 1994. Claimant's Statement of Answer to Respondent's Crossclaims was filed on or about October 17, 1994.

Respondent's Statement of Answer was filed on or about October 4, 1994.

HEARING INFORMATION

The hearing was held on March 18, 1996 in St. Louis, Missouri for a total of one (1) sessions.

CASE SUMMARY

Claimant stated that: On or about July 2, 1993, Claimant extended an offer of employment to Respondent which was summarized in a letter; the letter stated that Claimant would pay to Respondent the sum of \$10,000 which was later supported by a Promissory Note (the "Note"); the letter also specified that Respondent would receive a monthly draw of \$5,000, in the form of a loan, during the first year of his employment; the Note was to be repaid in two (2) parts \$5,000 due in July of 1994, and \$5,000 due in July of 1999; interest, per the Note, would accrue at the rate of 10% on the unpaid balance; the Note further provided that the principal and accrued interest was immediately

due and payable if Respondent's employment with Claimant ceased for any reason, and that Respondent would reimburse Claimant for any and all damages, losses, costs and expenses; on or about January 27, 1994, at the request of Respondent, Claimant loaned Respondent an additional \$9,794.54 which was likewise set forth in a Promissory Note which contained, in substantial part, the same terms as the prior Note; on or about February 24, 1994, Respondent tendered his voluntary and immediate resignation; Claimant has made several demands for repayment of all outstanding indebtedness on both Promissory Notes as well as return of Claimant's property which remains in Respondent's possession and more fully set forth at page two (2) of the Statement of Claim; and Respondent has an outstanding indebtedness to claimant in the amount of \$1,774.67 which is the difference in Respondent's sales transactions and his draw account with Claimant. Finally, Claimant: Denied that there was any employment agreement with Respondent that contained a provision to excuse any of Respondent's indebtedness under either Promissory Note upon the attainment of a certain level of sales; denied any indebtedness to Respondent; denied that it converted Respondent's property which was left with Claimant's facility at the time of respondent's resignation; and attempted to contact Respondent and deliver Respondent's property to him in an attempt to return the property, and was refused at each attempt.

Unless otherwise admitted in his Answer and Counterclaim, Respondent denied the allegations set forth in the Statement of Claim. Respondents specifically stated that: the employment letter does not accurately reflect the employment agreement between the parties; almost from the outset of respondent's employment, Claimant breached the employment agreement by not providing Respondent with the support necessary to create a firm marketing strategy and plan; the Note contained a provision that it would be forgiven if Respondent produced \$150,000 in business in his first year of employment and \$250,000 in his second year of employment, which Respondent was unable to make due to Claimant's breach of contract; Respondent would, by virtue of Claimant's promise prior to execution of the Promissory Note, not have to pay the \$9,794.54 claimed owing by the Claimant on the date specified in the agreement; and prior to leaving employment with Claimant, Respondent submitted two expense reimbursement reports in the amount of \$1,900 and \$750 respectively which have not been paid, and two additional expenses of \$432.83 and \$14.25 both of which should be reimbursed.

RELIEF REQUESTED

Claimant requested an award of the following: \$10,000 plus 10% interest from July 16, 1993; \$9,794.54 plus 10% interest accruing from January 27, 1994; \$1,774.67, the outstanding balance from Respondent's draw account; the property of Claimant in Respondent's possession; arbitration filing fees and deposit in the amount of \$1,100; and attorneys' fees. Claimant also sought reimbursement of Respondent's personal effects, as well as appraisal and monthly storage costs of Respondent's property to the date of hearing.

Respondent requested an award of the reasonable value of the property converted by the Claimant as proven at the arbitration, together with punitive damages as provided by law. Respondent further requested that the panel award him \$3,097.08 as reimbursement for expenses incurred by him while employed by Claimant, and for all costs and attorneys' fees of this proceeding.

OTHER ISSUES CONSIDERED & DECIDED

On or about October 17, 1994, claimant filed a Motion, pursuant to §25(b)(2)(iii) of the NASD Code of Arbitration Procedure (the "Code") to bar Respondent from presenting any matter, arguments or defenses at the hearing. On or about March 8, 1996, Claimant filed a Motion to Dismiss the Crossclaims raised in Respondent's Statement of Answer, as well as a renewal of its October 17, 1994 Motion to Bar. At the start of the hearing on March 18, 1996, after review of the motions and related documents, and deliberation, the undersigned arbitrators denied the motions in their entirety.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent had received due notice of the hearing as required under §26 of the Code and that arbitration of the matter would proceed pursuant to §29 of the Code.

Respondent did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §8 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, is bound by the determination of the arbitration panel on all issues submitted.

The parties present at the hearing have agreed that a handwritten, signed Award may be entered. The parties present at the hearing have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD.

On or about March 18, 1996 at 9:23 a.m. Central Time, Kovac sent, by facsimile, a request to reschedule this arbitration to the NASD office in Chicago, Illinois. Due to the fact that the request was not transmitted by telephone and/or sent by facsimile to the hearing location, the hearing proceeded without Kovac's presence. On or about March 25, 1996, Claimant responded to the request. On or about April 10, 1996, Kovac filed an additional request to reschedule the hearing. After review of the above-referenced requests and response, and deliberation, the undersigned arbitrators denied Kovac's request to reschedule this hearing.

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:

Respondent is liable for and shall pay to the Claimant the following: \$1,147.30 as an award of moving and storage costs; \$10,000 plus interest at the rate of 10% from January of 1994; \$9,794.54 plus interest at the rate of 10% from January of 1994; and NASD arbitration filing costs in the amount of \$1,100. Respondent has 30 days from receipt of this award to take possession of his furniture/property left at Claimant's facility or the furniture/property will be sold and proceeds used to offset this award.

Each party shall bear its own costs and expenses, including attorneys' fees, associated with this arbitration.

Any claims for relief/requests for damages not specifically set forth herein are, and each of them, denied and dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) session x \$600 = \$600 in forum fees. Pursuant to §44(b) of the NASD Code of Arbitration Procedure (the "Code"), 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 §44(c) of the Code, the 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.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$200 previously paid by the Claimant.

The NASD shall retain postponement fees in the amount of \$600 previously deposited by the Respondent.

Dated:

Gary C. Liddicoat
Gary C. Liddicoat
Industry Arbitrator, Presiding Chair

/s/

May 15, 1996

John Fox Arnold
John Fox Arnold
Industry Arbitrator

/s/

May 15, 1996

Dale W. Roth
Dale W. Roth
Industry Arbitrator

/s/

May 16, 1996

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STATE OF: *New York*

SS:

COUNTY OF: *Westchester*

On this 25 day of October 19 94 before me personally appeared **JOSEPH E. DAGROSA** to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

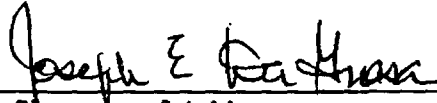
Helen Bochnik

HELEN BOCHNIK
Notary Public, State of New York
No. 4500732
Qualified in Westchester County
Term Expires Dec. 31, 1995

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AFFIRMATION

I, **JOSEPH E. DAGROSA**, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in cursive script, reading "Joseph E. Dagrosa", written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: October 31, 1994