

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimants

Dennis W. Heatherly and Greg Newton

and

94-02114

Name of Respondent

Rodman & Renshaw, Inc.

REPRESENTATION OF PARTIES

Dennis W. Heatherly and Greg Newton (collectively as "**Claimants**") were represented by Peter S. Lubin, Esq., McConnell & Mendelson, Chicago, Illinois.

Rodman & Renshaw, Inc. ("**Respondent**") was represented by John M. Murphy, Esq., Baker & McKenzie, Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about June 7, 1994. Amended Statement of Claim is dated February 17, 1995. Submission Agreement of Claimants Dennis W. Heatherly and Greg Newton was signed on June 1, 1994.

Statements of Answer was filed by Respondent Rodman & Renshaw, Inc. on or about September 28, 1994. Submission Agreement of Respondent Rodman & Renshaw, Inc. was signed on October 17, 1994 by James D. Van De Graff.

HEARING INFORMATION

The hearing was held on Thursday, November 2, 1995 in Chicago, Illinois for a total of three (3) sessions.

CASE SUMMARY

Claimants alleged that Respondent violated their employment agreements by not paying them commissions or salary owed. Claimant Heatherly specifically alleged that he was entitled to ¾ of

1% of the gross revenues for the mortgage backed area which was not paid after his termination. Claimant Heatherly also alleged that pursuant to the terms of a commission agreement between the parties he was entitled to a finders fee for the underwriting for the DuPage County Forest Preserve District. Claimant Newton specifically alleged that he was entitled to $\frac{1}{3}$ of $\frac{3}{4}$ of 1% of the gross sales credits from the Chicago mortgage backed area from June 1 through October 1 which was not paid after his termination.

In response to the allegations of Claimant Dennis Heatherly, Respondent denied that the parties entered into a written employment contract with Claimant Heatherly and denied that Claimant Heatherly did not receive full compensation pursuant to the terms of his employment. Respondent further stated that it paid in its discretion an override bonus to Claimant Heatherly. Respondent further denied that Claimant Heatherly was entitled to a commission for the DuPage County Forest Preserve District underwriting since Claimant Heatherly did not assist in the underwriting and was not involved in obtaining the DuPage County Forest Preserve District as a client.

In response to the allegations of Claimant Newton, Respondent denied that Claimant Newton did not receive all compensation that he was entitled to. Specifically, Respondent stated that Claimant Newton had voluntarily terminated his employment prior to the conclusion of the 1993 fiscal year and was therefore not eligible for an override bonus.

RELIEF REQUESTED

Claimant Heatherly requested an award in the amount of at least \$18,000 for the breach of the employment contract and at least \$6,000 for the breach of commission contract; interest; attorneys' fees and costs.

Claimant Newton requested an award of at least \$5,000 for the breach of the employment contract.

Respondent requested that the claims asserted against it be denied in its entirety and that it be awarded its' costs and attorneys' fees.

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 original(s) remain on file with the NASD.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Rodman & Renshaw, Inc. shall be and hereby is liable for and shall pay to the Claimant Dennis W. Heatherly the sum of **Twenty seven thousand two hundred thirty six dollars and ninety five cents (\$27,236.95)**.
2. Respondent Rodman & Renshaw, Inc. shall be and hereby is liable for and shall pay to the Claimant Greg Newton the sum of **Three thousand eight hundred three dollars and seven cents (\$3,803.07)**.
3. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$300 per hearing session and \$300 for each prehearing conference, if any. There were three (3) sessions x \$300 = \$900 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 §44(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 **refund** as forum fees the hearing session deposit in the amount of \$300 previously deposited with the NASD by the Claimants. Respondent Rodman & Renshaw, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$900 as the balance due for forum fees. **Fees are payable to the National Association of Securities Dealers, Inc.**

Dated:

/s/ Joy Pava Shulruff, Esq.

Joy Pava Shulruff, Esq.

Industry Arbitrator, Presiding Chair

November 29, 1995