

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Reich & Co., Inc.

94-02309

Name of Respondent

Stuart Lawrence Davis

REPRESENTATION

For Claimant, Reich & Co., Inc. ("Claimant"), Martin E. Karlinsky, Esq. located in New York, NY.

For Respondent, Stuart Davis ("Respondent"), Alan Serrins, Esq. of the law firm of Dienst & Serrins, located in New York, NY.

CASE INFORMATION

Statement of Claim filed: June 8, 1994.

Claimant's Submission Agreement signed on: June 8, 1994.

Statement of Answer filed by Respondent on: November 8, 1994.

Respondent's Submission Agreement signed on: November 8, 1994.

Respondent's Counterclaim filed on: November 8, 1994.

Claimant's Reply to Counterclaim filed on: December 2, 1994.

HEARING INFORMATION

Hearing Dates/Sessions:	October 26, 1994	-	1 Session
	January 4, 1996	-	2 Sessions
	January 5, 1996	-	1 Session

CASE SUMMARY

Claimant alleged that by written agreement dated June 14, 1993, it hired and engaged Respondent as a registered representative to be employed in its Red Bank, NJ office. Claimant further alleged that pursuant to the written agreement it made an advance payment to Respondent in the amount of \$30,000.00. Claimant contended that pursuant to the terms of the written agreement, Respondent was to receive specified payouts predicated upon his "gross dealer commission" ("GDC") generated. Claimant further contended that all sums paid to Respondent in excess of 55% of GDC payout were to be repaid in full immediately in the event that Respondent voluntarily terminated his employment with Claimant within 36 months of the initiation thereof. Claimant alleged that Respondent voluntarily terminated his employment with Claimant in or about March, 1994 and at the time of his termination, Claimant had paid Respondent the aforesaid advance of \$30,000 as well as \$46,634.33 in excess of commissions that Respondent would have been paid consistent with Claimant's standard payout grid. Claimant alleged that pursuant to the terms of the written agreement, Respondent owed Claimant the sum of \$76,634.33 on his termination of employment which he has refused to repay.

Respondent denied that he was obligated to repay certain sums of money to Claimant in the event of the voluntary termination of his employment. Respondent denied that he has failed and refused to repay Claimant monies due pursuant to the written employment agreement.

In a counterclaim, Respondent maintained that he previously worked for Vantage Securities before leaving August 1992. Respondent further maintained that subsequently, Vantage Securities purchased Reich & Co. Respondent contended that in an attempt to induce him to "come back" to Reich, Claimant represented that the Whitehall Group was backing it and that Claimant now had Martin Simpson for research purposes, and that the financial difficulties previously encountered were now cured. Respondent contended that pursuant to the agreement he executed with Claimant, he was to have a private office, receive 30,000 shares for the next initial offering whereupon Claimant is the primary underwriter, and, in addition, Claimant will agree to allocate 20,000 shares in the following two deals where it is the primary underwriter. Respondent further contended that before leaving the employ of Claimant, he found that the agreement dated June 14, 1993 had been materially breached, and that he had been fraudulently induced into signing the agreement. Respondent maintained that he has been damaged as a consequence of this fraud.

In its reply to Respondent's counterclaim, Claimant generally denied the allegations contained therein.

RELIEF REQUESTED

Claimant requested \$76,634.33 in actual damages, interest, costs, attorney's fees and such other and further relief as the arbitration panel may deem just and proper.

Respondent requested that the claims of the Claimant be dismissed and that he be awarded compensatory damages in excess of \$200,000, damages for breach of contract in the amount of \$50,000, punitive damages of \$100,000, attorney's fees, costs and such other and further relief as the interests of justice may require.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies and agreed to receive conformed copies of the Award while the originals remain 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. Respondent is liable and shall pay to the Claimant \$38,700.00 in actual damages.
2. Respondent is liable and shall pay to the Claimant interest to accrue at the statutory rate for New York State from such time as this Award is served upon Respondent or his attorney.
3. The counterclaim of Respondent against Claimant is dismissed in its entirety.
4. Each party shall bear their own costs, including attorney's fees, except that Claimant be and hereby is liable and shall pay to Respondent the sum of \$1,250.00 as reimbursement of the \$500.00 filing fee and \$750.00 hearing sessions deposit previously deposited with the NASD by Respondent.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

Non-refundable filing fee deposited by Claimant	\$ 500.00
Non-refundable filing fee deposited by Respondent	500.00
Four hearing sessions x \$750.00	<u>3,000.00</u>

Total fees assessed	\$4,000.00
Minus amount previously paid to NASD	<u>2,350.00</u>

Total amount of fees outstanding	\$1,650.00
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Claimant be and hereby is liable for the sum of \$4,000.00 representing the total amount of fees assessed and shall pay to the NASD the sum of \$1,650.00, representing the amount of fees outstanding.

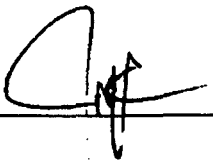
Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature
Name



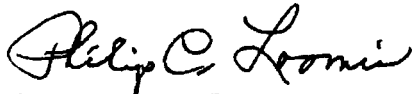
Franklin I. Ogele, Esq.

I, Franklin I. Ogele, Esq., do hereby affirm that this is my decision in the above-captioned matter.



NASD Date of Decision: March 21, 1996

Concurring Arbitrator's Signature
Name



Philip C. Loomis, CFA

I, Philip C. Loomis, CFA, do hereby affirm that this is my decision in the above-captioned matter.



NASD Date of Decision: March 21, 1996

RECIPIENTS:

Philip C. Loomis, CFA

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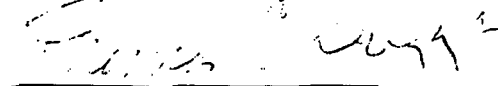
NASD Case No. 94-02309

Concurring Arbitrator's Signature
Name



Thomas E. Duggan, Esq.

I, Thomas E. Duggan, Esq., do hereby affirm that this is my decision in the above-captioned matter.



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NASD Date of Decision: March 21, 1996