

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Alan Titunik

94-03915

Name of Respondent

DESCAP Securities, Inc.

REPRESENTATION

For Claimant Alan Titunik ("Claimant") appeared George A. Aguilar, Esq. of the law firm of Pitney, Hardin, Kipp & Szuch located in Morristown, New Jersey.

For Respondent DESCAP Securities, Inc. ("Respondent") appeared Nina S. Epstein, Esq. of the law firm of Goldweber and Lauriello L.L.P. located in New York, New York.

CASE INFORMATION

Statement of Claim filed: September 22, 1994.

Claimant's Submission Agreement signed on: September 22, 1994.

Statement of Answer filed: November 18, 1994.

Respondent's Submission Agreement signed on: November 16, 1994.

HEARING INFORMATION

Hearing Date/Sessions: September 12, 1995 - Two Sessions

The hearing was held at the New York County Lawyer's Association located in New York, New York.

CASE SUMMARY

Claimant alleged that, beginning in December, 1993, he began having discussions with Respondent's partners concerning the possibility of him building a core business for Respondent in the form of a convertible security department. Claimant further alleged that he prepared a

business plan for the core business concept and used it during a presentation at Respondent's offices on February 18, 1994.

Claimant alleged that, on February 23, 1994, he was advised that Respondent had decided to offer him employment so that he could carry out the business plan and that he was given a letter dated February 18, 1994 which set forth the terms of his employment. Claimant further alleged that, in reliance on the February 18, 1994 agreement, he severed several business relationships and began working for Respondent to carry out his business plan.

Claimant alleged that, in accordance with the February 18, 1994 agreement, Respondent paid him his salary for the months of March and April, but that in May, 1994 he was advised that, because of Respondent's financial condition, Respondent would not make further salary payments to him. Claimant further alleged that Respondent proposed a straight commission compensation arrangement, but that the proposal was an empty offer since Respondent had no core infrastructure to allow a convertible security business to be run from its operation. Claimant also alleged that he had conformed with the business plan by giving visibility to Respondent's new and developing capabilities, but that Respondent beached the terms of the February 18, 1994 agreement.

Respondent maintained that Claimant failed to state a claim upon which relief could be granted. Respondent also maintained that at no time did it enter into an employment agreement with Claimant and that Claimant was an employee at will and subject to termination within its discretion.

Respondent maintained that Claimant had been hired to sell convertible securities for Respondent, but that Claimant failed to perform the duties for which he had been hired. Respondent further maintained that Claimant failed to sell convertible securities or to generate any revenues. Respondent also maintained that, according to Claimant's business plan, he was to generate revenues by his fourth month with Respondent, but that, in early May 1994, Claimant advised Respondent that he would not produce any revenues for at least another six months.

Respondent maintained that Claimant failed to produce monthly research reports and failed to visit clients or potential clients. Respondent further maintained that it was forced to shut down its convertible securities department in May 1994. Respondent also maintained that Claimant was told he could continue to sell convertible securities on a commission only basis, but that Claimant refused.

RELIEF REQUESTED

Claimant requested that the panel award him \$108,143.00 and costs of bringing this proceeding.

Respondent requested that the claim be dismissed with prejudice and that it be awarded legal fees and costs in connection with this proceeding.

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 originals remain on file with the NASD.

AWARD

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

1. Respondent be and hereby is liable and shall pay to Claimant the sum of \$25,000.00.
2. Each party shall bear their own costs, including attorneys' fees.
3. All other claims are hereby denied.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 filing fee previously deposited by Claimant and have assessed the following forum fees:


2 hearing sessions x \$750.00 = \$1,500.00

1. Claimant be and hereby is liable for the sum of \$750.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited the sum of \$750.00 with the NASD and, therefore, Claimant owes nothing to the NASD.
2. Respondent be and hereby is liable for the sum of \$750.00, representing one-half of the total amount of forum fees assessed. Respondent previously deposited the sum of \$350.00 with the NASD and, therefore, Respondent is liable and shall pay \$400.00 to the NASD.

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

ARBITRATORS' SIGNATURES

G. Robert Abrams, Esq.
Industry Chairperson



Donald J. Rasweiler
Industry Arbitrator

Daniel B. Berkson, Esq.
Industry Arbitrator

Date of Decision: February 6, 1996

I, Donald J. Rasweiler, do hereby affirm that this is my decision in the above captioned matter.



Donald J. Rasweiler

ARBITRATORS' SIGNATURES

G. Robert Abrams, Esq.
Industry Chairperson

Donald J. Rasweiler
Industry Arbitrator

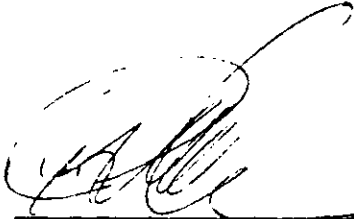
Daniel B. Berkson
Daniel B. Berkson, Esq.
Industry Arbitrator

Date of Decision: February 6, 1996

I, **Daniel B. Berkson, Esq.**, do hereby affirm that this is my decision in the above captioned matter.

Daniel B. Berkson
Daniel B. Berkson, Esq.

ARBITRATORS' SIGNATURES



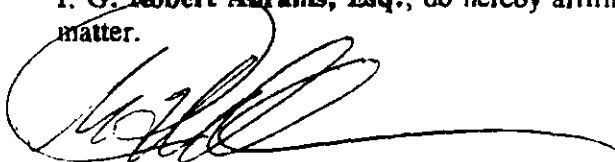
G. Robert Abrams, Esq.
Industry Chairperson

Donald J. Rasweiler
Industry Arbitrator

Daniel B. Berkson, Esq.
Industry Arbitrator

Date of Decision: February 6, 1996

I, ~~G. Robert Abrams~~, Esq., do hereby affirm that this is my decision in the above captioned matter.



G. Robert Abrams, Esq.