

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Planners Independent Management, Inc.

95-00277

Name of Respondent

James Edward Bennett

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 13, 1995, Claimant Planners Independent Management, Inc. ("Claimant"), who was represented by Mary R. Limoges, President, alleged that Respondent James Edward Bennett ("Respondent") was employed with Claimant as a registered representative. Claimant alleged that Respondent sold one of his clients two large variable annuity contracts whereby Respondent would receive commissions in the amount of \$9,650. Respondent received \$6,200 as advance and the remainder of the commissions were paid two days later. The next day Respondent voluntarily terminated his employment with Claimant. The client later rescinded his purchase of the variable annuity contracts which left the Claimant with a debit balance of \$9,650 for the commissions previously paid to Respondent. Claimant informed Respondent of this and that the debit balance must be paid by Respondent by the close of the following business day. Claimant alleged that on August 18, 1994 Respondent signed a promissory note for the amount of \$7,250. Claimant alleged that Respondent has made only one payment under the note. Claimant alleged that demand has been made on Respondent for the balance due on the note but that the balance remains due and owing.

Respondent did not deny that he owed Claimant the balance on the promissory note. Respondent maintained that he made one payment on the note and that the balance due is \$6,626.09. Respondent maintained that the reason that he has not paid Claimant the balance is that he is unable to pay. Respondent maintained that because he has been open and forthright that he should not be required to pay interest, punitive damages or any other penalties associated with the note.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$7,027.42 which includes accrued interest from October 15, 1994 through January 6, 1995; plus interest from that date until the award is paid at a rate of \$1.94 per day, plus punitive damages in the amount of \$500.

Respondent requested that the amount owed be reduced to \$6,626.09; that the interest be waived for two years.

### **AWARD**

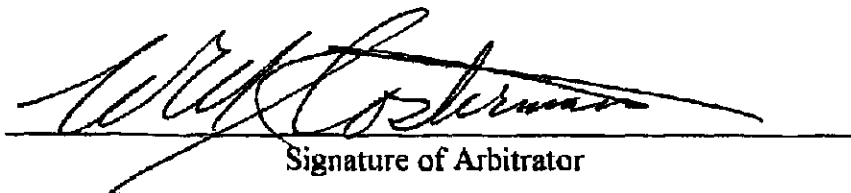
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public Arbitrator, Walter W. Klosterman, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 9, 1995 and by the Respondent on May 8, 1995.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent James Edward Bennett is liable to Claimant and shall pay to Claimant the sum of \$7,472.92; this amount is inclusive of pre judgment interest. In addition, Respondent shall pay additional interest on the award of \$7,472.92 at the rate of 10% simple interest per annum from October 15, 1995 until the date the award is paid.
2. Claimant's claim for punitive is denied.
3. The parties shall bear their respective costs including attorney's fees.
4. The \$500.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. ("NASD") by the Claimant shall be retained by the NASD. Respondent is liable for and shall pay to Claimant, \$500.00 as reimbursement of the filing fee.

**AFFIRMATION**

I, **WALTER W. KLOSTERMAN**, 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.

  
Signature of Arbitrator

DATE AWARD SERVED BY THE NASD: *October 12, 1995*