

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Michael P. Nemlich,

Claimant,

and

No. 95-00298

Hamilton Investments, Inc.,

Respondent,

REPRESENTATION OF PARTIES

For Claimant: Michael P. Nemlich ("Nemlich") was represented by Mitchell B. Katten, Esq., Michael J. O'Rourke, Esq., Thomas G. Griffin, Esq., and Robert J. Labate, Esq., of O'Rourke & Griffin, located in Chicago, Illinois.

For Respondent: Hamilton Investments ("Hamilton") was represented by Rosemarie Guadnolo, Esq., of Horvath & Lieber, P.C., located in Chicago, Illinois.

CASE INFORMATION

Claimant's Statement of Claim was filed on: January 20, 1995.

Claimant's Submission Agreement was signed on: January 19, 1995.

Respondent's Statement of Answer was filed on: May 15, 1995.

Respondent's Submission Agreement was signed on: April 3, 1995. by Cheryl Maraffio.

HEARING INFORMATION

Pre-hearing Conferences: April 17, 1996 for One (1) session; and
February 10, 1997 for One (1) session.

Hearing Dates/Sessions: February 12, 1997 for Two (2) sessions;
February 13, 1997 for Two (2) sessions; and
February 14, 1997 for One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

The Claimant has alleged the following:

Michael Nemlich was employed by Hamilton Investments (formerly Illinois Corporation and Oberweiss Securities) for approximately ten years. Nemlich was terminated in November 1992. At the time of his termination, Nemlich received a base salary of \$60,000 a year. Nemlich seeks an award for three elements of damage: (1) the value of 12,600 warrants issued in connection with the public offering of Home Intensive Care Inc. ("HIC") stock; (2) retail commissions for the sale of Halo Stock; and (3) thirty eight weeks of severance pay.

Plaintiff seeks to recover the value of 12,600 warrants, approximately \$106,000, which were issued in Nemlich's name in July, 1991 in connection with the public offering of HIC. In April 1992, Hamilton required that the warrants be reissued in its name. Hamilton contends that it was against its policy to issue warrants in the names of individuals. Industry policy and practice is to issue warrants in the name of individuals.

Secondly, Nemlich seeks commissions for retail sales of Halo stock. The total commissions generated by Nemlich's the sale of Halo stock was approximately \$11,610 with \$5,805 due to Nemlich. After Nemlich opened new accounts for purchasers of the stock, Hamilton ordered that the commissions be transferred to another retail broker. This action was inconsistent with Hamilton's policy and practice.

Finally, Nemlich did not receive any severance pay because he would not waive his rights with respect to the HIC warrants and Halo commissions. Nemlich contends that he is entitled to approximately 38 weeks of severance pay. Respondent has offered Nemlich 18 weeks of severance pay.

Hamilton denied the allegations set forth in the Statement of Claim, asserting that Nemlich was not authorized to engage in retail sales involving companies for which Hamilton was engaged in corporate financing services. Hamilton admitted that upon reconsideration, Nemlich's receipt of warrants from companies with which Hamilton was engaged in corporate finance projects was not consistent with Hamilton's policy, and that it was Nemlich's decision to follow this policy by transferring the warrants to Hamilton. Respondent also stated that Nemlich's termination date was December 7, 1992, which is contradictory to what Claimant asserted. Furthermore, Hamilton asserted that severance pay was discretionary, and that Claimant was paid in full for all unused vacation days for which he was entitled to compensation.

RELIEF REQUESTED

Claimant Nemlich requested an award for compensatory damages in the amount of \$254,435.45, plus increased pension benefits to reflect adjusted income, the value of the 2,200 warrants of Universal International, Inc., and attorney fees.

Respondent Hamilton requested that the claims asserted against it be dismissed, and that it be awarded its expenses in defending this action.

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 NASD Regulation, Inc. Office of Dispute Resolution.

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 Hamilton Investments, Inc. is liable for and shall pay to the Claimant, Michael P. Nemlich, the sum of \$32,000.00 as actual damages;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to §10332(b) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed: Two (2) pre-hearing conference sessions x \$300.00 per session = \$600.00; Five (5) hearing sessions x \$750.00=\$3,750.00; Total Forum Fees = \$4,350.00.

The NASD Regulation, Inc. Office of Dispute Resolution 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 \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant Michael P. Nemlich. In addition, Claimant Michael P. Nemlich is liable for and shall pay to the

NASD Regulation, Inc., Office of Dispute Resolution, the sum of \$1,425.00 as additional forum fees.

Pursuant to §10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Respondent Hamilton Investments, Inc..

Respondent Hamilton Investment, Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution postponement fees in the amount of \$750.00. In addition, Respondent Hamilton Investments, Inc. is liable for and shall pay to the Office of Dispute Resolution forum fees in the sum of \$2,175.00.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

/s/ Perry L. Taylor. Esq.
Perry L. Taylor, Esq.
Industry Arbitrator, Presiding Chair

March 27, 1997

/s/ Herbert J. Paske
Herbert J. Paske
Industry Arbitrator

March 17, 1997

/s/ Robert L. Sanders
Robert L. Sanders
Industry Arbitrator

March 24, 1997