

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Tucker Anthony Incorporated

95-00381

Name of Respondent

Terrence M. Maher

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**REPRESENTATION**

For Claimant appeared Patrick J. Howley, Esq., in-house counsel for Claimant.

The Respondent appeared Pro Se.

**CASE INFORMATION**

The Statement of Claim was filed on January 25, 1995. Claimant's Submission Agreement was signed on February 6, 1995.

The Statement of Answer was filed by Respondent on May 1, 1995. Respondent's Submission Agreement was signed on April 28, 1995.

**HEARING INFORMATION**

Hearing Date/Sessions:                      March 6, 1996                      -                      Two Sessions

The hearing was held at the Midday Club located in New York City, New York.

**CASE SUMMARY**

Claimant alleged that Respondent was employed as a registered representative and that at the commencement of his employment, he signed an agreement in which he agreed to arbitrate any claims arising between himself and the Claimant. Claimant further alleged that Respondent was paid a salary and was credited with the commissions he generated in excess of his \$2,000.00 monthly draw. However, Claimant asserted that if Respondent failed to produce a minimum of \$2,000.00 a month, the deficiency was carried over to the subsequent month. Claimant also asserted that in April of 1994, Respondent voluntarily terminated his employment and that at that time, he had a draw deficit of \$5,764.00. Further, Claimant alleged that it made several demands for payment which were all unsuccessful.

Respondent maintained that when he agreed to employment with Claimant, it was declared that he would receive an undetermined regular draw rather than a 40% payout rate through February 1993 and that thereafter, he would receive the difference of 20% above the grid which he understood would be 60%. Respondent also maintained that he and Claimant never discussed minimum production levels, nor was a differentiation made between the rate he was paid and some other rate. Further, Respondent maintained that as of January 1994, Claimant lowered his pay rate to 25% without informing him. Respondent contended that Claimant's accounting department used the wrong time period in their deficit calculations and thus there is no deficit. Respondent also contended that Claimant's legal and accounting departments were confused by the salary arrangement and that Claimant actually owes him \$1480.00 representing the difference between his agreed upon pay rate and the rate actually paid.

#### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$5,764.00 plus interest, filing fees, costs, attorney's fees and any other relief deemed just and proper.

Respondent requested damages in the amount of \$1,480.00, plus interest and relevant expenses.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has 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 the Claimant the sum of \$6,196.00 inclusive of interest.
2. Respondent be and hereby is liable and shall pay to the Claimant the sum of \$300.00 representing fees previously paid to the NASD.
3. Each party shall bear their respective costs, including attorneys' fees.
4. All other claims are hereby denied.

#### **FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the arbitrator has determined that the NASD shall retain the \$500.00 non-refundable filing fee in this matter and has assessed the following forum fees:

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2 Segments x \$300.00 =  
minus hearing deposit  
Total fees outstanding

\$600.00  
~~\$300.00~~  
\$300.00

The Respondent is liable and shall pay to the NASD the sum of \$300.00.

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

**ARBITRATOR'S SIGNATURE**

  
Theodore A. Krueber, Esq.  
Industry Arbitrator

Date of Decision: June 14, 1996