

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Francisco R. Cuevas

95-00824

Name of Respondent

Montano Securities Corp.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 16, 1995, Claimant Francisco R. Cuevas ("Claimant"), who appeared Pro Se, alleged that Respondent Montano Securities Corp. ("Respondent"), failed to pay him commissions while he was employed by it, as a registered representative. Claimant further alleged that he placed orders for Brian McGraft, one of the Respondent's principals, in November of 1994, through Gruntal & Co., Inc., and is entitled to commissions for those orders. Claimant contended that in December of 1994, the Respondent closed its branch where he was employed and that he was unable to secure payment of the commissions before it closed. Claimant further contended that the Respondent is not in bankruptcy and therefore, does not have bankruptcy protection. Claimant alleged that he contacted David Lopes, the newly appointed president of Respondent, and was told that the brokers would not be getting paid their commissions. Claimant further alleged that David Lopes said the other creditors would get any commissions that Gruntal & Co., Inc. paid it. Claimant contended that as a result of the above, he has suffered a loss for which the Respondent should be held liable.

Respondent Montano Securities Corp., failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Francisco R. Cuevas, requested \$6,729.62 in actual damages.

Respondent Montano Securities Corp., failed to file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

In accordance with Section 10 of the NASD Code of Arbitration Procedure, the Respondent Montano Securities Corp., was served by regular mail and given an opportunity to respond, which it failed to do. In addition, an overdue answer notice was sent to the Respondent by certified mail and the signature card was returned unsigned and is on file at the NASD.

Pursuant to the By-laws of the NASD, the Arbitrator determined that Respondent Montano Securities Corp., had notice of the claim, and was required to submit to this arbitration proceeding; and is, therefore, bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Section 10 of the NASD, Inc. Code of Arbitration Procedure, a single Industry Arbitrator, Mark Lehman, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Francisco R. Cuevas, on February 14, 1995, and not by the Respondent Montano Securities Corp., as required by Sections 8 and 10 of the NASD Code of Arbitration Procedure.

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. The Respondent Montano Securities Corp., is liable and shall pay to the Claimant Francisco R. Cuevas, \$6,729.62 in actual damages.
2. The parties shall bear their respective costs.
3. The \$575.00 filing fee was previously waived by the Director of Arbitration of the National Association of Securities Dealers, Inc. The Respondent is liable and shall pay the \$575.00 filing fee to the NASD, Inc.

AFFIRMATION

I, **MARK LEHMAN, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Mark Lehman, Esq.

DATE OF DECISION: October 31, 1995