

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Statewide Securities Group, Inc.

95-00872

Name of Respondent(s)

Vikki Ann Ciotti

REPRESENTATION

For Claimant Statewide Securities Group, Inc. ("SSG"): Robert DeVore, Esq. of the law offices of Robert DeVore, Sarasota, Florida.

For Respondent Vikki Ann Ciotti ("Ciotti"): Robert Mudge, Esq. of the law offices of Robert Mudge, Venice, Florida.

CASE INFORMATION

Statement of Claim filed: February 21, 1995 and amended on May 10, 1995. Claimant's Submission Agreement signed on: February 16, 1995 by Thomas Vassallo on behalf of SSG.

Statement of Answer filed by Respondent on May 8, 1995. Respondent's , Submission Agreement signed on May 3, 1995.

HEARING INFORMATION

On October 9, 1995 in Tampa, Florida a hearing lasting one session was conducted.

CASE SUMMARY

Claimant, alleged that: at the time of Ciotti's association with SSG, Ciotti and SSG entered into an oral contract whereby SSG agreed to advance Ciotti the sum of \$3,000.00 per month against future commissions earned by Ciotti and that Ciotti was responsible for repaying to SSG any advances that were in excess of the commissions generated and earned by Ciotti. Claimant alleged that at the time Ciotti terminated her employment with SSG she was indebted to SSG in

the amount of \$10,854.45 and, after applying credit for commissions due Ciotti for September 1994 and deducting monies for licensing training Ciotti owes SSG the sum of \$10,519.99.

Respondent alleged that: at no time during Ciotti's employment by SSG was there any discussion or agreement that the \$3,000.00 would be an advance against future commissions or that Ciotti would be responsible for repaying any salary paid in excess of commissions earned; and, all her pay stubs bore the notation "salary". Respondent alleged that SSG never demanded repayment while she was employed and that even if there was an agreement, it is unenforceable for lack of consideration. Respondent alleged that, only in the final month of her employment was there any discussion of her being compensated on any basis other than as a salaried employee and, but for the guarantee of a \$3,000.00 per month salary, Ciotti would not have left a higher paying salary at her former company and forego her Christmas bonus and other benefits which would have accrued as a result of her upcoming ten year anniversary.

RELIEF REQUESTED

Claimant requested damages in the amount of \$10,519.99 plus interest and costs.

Respondent requested dismissal of the claim.

OTHER ISSUES CONSIDERED & DECIDED

None

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is hereby found liable and shall pay to Claimant the amount of \$2,500.00.
2. Claimant's request for interest and costs is hereby denied.

OTHER COSTS

Other than the forum fees noted below, the parties shall bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrator has assessed forum fees in the amount of \$300.00 (one session x \$300.00).

1. Claimant is hereby assessed forum fees in the amount of \$150.00 for which the NASD shall retain the \$300.00 hearing session deposit previously paid by Claimant in full satisfaction thereof.

2. Respondent is hereby assessed fourm fees in the amount of \$150.00 to be paid directly to the Claimant as a partial refund of the hearing session deposit.

3. Respondent shall also pay to Claimant \$250.00 as a partial refund of the filing fee previously paid by Claimant.

Arbitrator's Signature

Name

/s/

Andrew G. Fellios

Public/Industry

Industry/Chairman

Date of Decision: 1-17-96