

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Names of Claimants

Thomas A. Honeycutt  
James R. Hill

95-01142

Name of Respondent

James Mitchell & Co.

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REPRESENTATION

For Claimant, Thomas A. Honeycutt ("Honeycutt"): pro se.

For Claimant, James R. Hill ("Hill"): pro se.

For Respondent, James Mitchell & Co. ("JMC"): Richard A. DuRose of Foley & Lardner, Orlando, Florida and Pamela R. Schneider of James Mitchell & Co., San Diego, California.

CASE INFORMATION

A Joint Statement of Claim filed: 3/6/95.

Claimant, Honeycutt's Submission Agreement signed on: 2/27/95.

Claimant, Hill's Submission Agreement signed on: 2/22/95.

Respondent, JMC's Statement of Answer filed: 5/10/95.

Respondent, JMC's Submission Agreement signed on: 5/10/95 by Richard A. DuRose, Esq. on behalf of JMC.

HEARING INFORMATION

On 1/22/96 and 1/23/96, in Tampa, Florida a hearing lasting three (3) sessions was conducted.

### **CASE SUMMARY**

Claimants alleged that Respondent breached its respective employment contracts with the Claimants when Respondent refused to pay severance and retention fees. These fees were allegedly due to Claimants when Respondent sold its business and negotiated the rights to recruit Respondent's personnel.

Respondent alleged that there was no contractual or legal obligation of Respondent to pay discretionary benefits; that the grievance was based entirely upon a "Not For Distribution" memorandum which was to be used only for discussion purposes and was not an amendment to Claimants' employment contract; that the Claimants were offered and accepted comparable positions with the acquiring company; that Claimants are paid substantially the same, and received signing bonuses, and have substantially the same supervisory and management responsibilities at the acquiring company.

Respondent also argued that attorney's fees are the responsibility of each party to pay and that the Florida Statutes regarding attorney's fees only apply to court cases; that the NASD Rules of Arbitration neither adopt the Florida Statutes, nor provide for attorney's fees of one side to be paid by the other.

### **RELIEF REQUESTED**

Claimant, HoneyCutt, requested damages to cover severance and retention pay amounting to \$41,166.22, attorney's fees, costs, and such other relief as the Panel deemed appropriate.

Claimant, Hill, requested damages to cover severance and retention pay amounting to \$44,601.48, attorney's fees, costs, and such other relief as the Panel deemed appropriate.

Respondent, JMC, requested that the claims of the Claimants be denied in their entirety with each party bearing its own costs, including attorneys fees.

### **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 the NASD.

### **AWARD**

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

1. Respondent, JMC, is found not liable and, therefore, all claims against it are hereby dismissed.
2. Claimant, Honeycutt's request for attorney's fees, costs and expenses is hereby denied.
3. Claimant, Hill's request for attorney's fees, cost and expenses is hereby denied.
4. Claimant, Honeycutt, shall pay to Respondent, JMC, costs in the amount of \$2,000.00
5. Claimant, Hill, shall pay to Respondent, JMC, costs in the amount of \$2,000.00

**OTHER COSTS**

The parties shall bear all other costs and expenses incurred by them in connection with this proceeding.

**FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount \$1,800.00 (three (3) hearing sessions X \$600.00).

1. Claimant, Honeycutt, is hereby assessed Forum Fees in the amount of \$600.00 for which the NASD shall retain the \$600.00 previously deposited in full satisfaction thereof.
2. Claimant, Hill, is hereby assessed Forum Fees in the amount of \$600.00.
3. The NASD shall retain the non-refundable filing fee of \$500.00 paid by the Claimants.

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

**ARBITRATION PANEL**

Concurring Arbitrators' Signatures

/s/

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A. William Cohen, Esq.

Industry/Chairperson

/s/

\_\_\_\_\_  
Peter Alessandri

Industry/Panelist

/s/

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George K. Beardsley

Industry/Panelist

Date of Decision: March 4, 1996