

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Michelle Poll

95-01163

Name of Respondents

Montano Securities Corporation
Montano Institute of Finance
California Quartz
David Lopes
Daniel Montano
Vicky Montano

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 7, 1995, Claimant Michelle Poll, who appeared Pro Se, alleged that Respondents Montano Securities Corporation ("MSC"), Montano Institute of Finance ("MIF"), California Quartz, David Lopes, Daniel Montano and Vicky Montano knowingly and willfully withheld monies owed her. Claimant further alleged that she was employed by MSC and MIF as a broker and the Head Instructor for the New York region for the school functions administered by the Institute. Claimant further alleged that her job responsibilities included teaching Series 7 and 63 NASD examinations. Claimant contended that as a broker she was not paid her last month's commission nor was she reimbursed for upgrading the computer system. Claimant further contended that various registration fees with not used to update her registration but were kept by the Respondents. Claimant alleged that her work as an instructor has not been paid for August of 1994 nor has she received reimbursement for expenses. Claimant further alleged that California Quartz is the apparent major shareholder or beneficiary of the Montano organization's assets. Claimant contended that as a result of the above, she has suffered a loss for which the Respondents should be held liable.

Respondents Vicky and Daniel Montano, who appeared Pro Se, maintained that as of December 20, 1994 the shareholders of Montano Securities Corporation dismissed them from the firm in all operating capacities. Respondents further maintained that their departure was done under protest and that any dispute which the Claimant may have for a period of time after their departure was not within their control. Respondents contended that Claimant is merely another general creditor of MSC and MIF, just as they are. Respondents further contended that Claimant signed an Independent Contractor Agreement which indicated that MSC would be responsible for repaying and expenses incurred on the job. Respondents maintained that several instructors were not paid monies owed by MSC but that as a result of the above, they should not be held liable.

Respondent Montano Securities Corporation did not file a Statement of Answer to the Statement of Claim.

Respondents Montano Institute of Finance, California Quartz and David Lopes were served on a voluntary basis and did not submit to the jurisdiction of this arbitration proceeding.

RELIEF REQUESTED

Claimant Michelle Poll requested \$4,903.97 in actual damages.

Respondents Vicky and Daniel Montano requested that the claims of the Claimant be dismissed.

Respondent Montano Securities Corporation did not file a Statement of Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

Pursuant to Section 10 of the NASD Code of Arbitration Procedure, the Respondent Montano Securities Corporation was served the Statement of Claim through the regular mail and given an opportunity to respond which it failed to do.

In accordance with the by-laws of the NASD, the arbitrator determined that the Respondent Montano Securities Corporation has notice of this proceeding and was required to submit to this 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, Patricia N. Cirillo, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 6, 1995, and not by the Respondents as is 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 claims of the Claimant Michelle Poll against Respondents Vicky and Daniel Montano are denied in their entirety.
2. The Respondents Montano Securities Corporation is liable and shall pay to the Claimant Michelle Poll \$1,428.00 in actual damages.
3. The Respondent Montano Securities Corporation is liable and shall pay to the Claimant Michelle Poll simple interest at the statutory rate in the State of New York from March 7, 1995 to date of payment of the award.

4. The parties shall bear their respective costs.
5. The \$150.00 previously deposited with the National Association of Securities Dealers, Inc. by the Claimant for partial satisfaction of the \$575.00 filing fee shall be retained by the NASD, Inc. The Respondent Montano Securities Corporation is liable and shall pay to the Claimant Michelle Poll \$150.00 as reimbursement of the filing fee. In addition, The Respondent Montano Securities Corporation shall pay to the NASD \$425.00 which represents the balance of the filing fee owned to the NASD.
6. All other relief requests are denied.

AFFIRMATION

I, **PATRICIA N. CIRILLO, ESQ.**, do hereby affirm that I am the individual described herein and who executed this instrument, which is my affirmation and award.



Patricia N. Cirillo, Esq.

DATE OF DECISION: May 30, 1996