

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

Name of Claimant

Commonwealth Associates

v.

95-01536

Name of Respondent

Christian Eminent

REPRESENTATION

For Claimant: David S. Richan, Esq., from the firm of Tenzer Greenblatt, LLP, New York, NY

Respondent did not appear at the evidentiary hearing conducted in this matter.

CASE INFORMATION

Statement of Claim filed: March 28, 1995

Claimant's Submission Agreement signed on: March 28, 1995

Respondent did not file an answer to the Statement of Claim or execute a Submission Agreement as required by Section 25 of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Hearing date/sessions: March 15, 1995 (1 Session)

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

CASE SUMMARY

Claimant, Commonwealth Associates ("Commonwealth"), alleged that it advanced Respondent, Christian Eminente, the sum of \$4,925.45 in connection with his employment at Commonwealth on the express condition that such sum would be repaid upon termination of Respondent's employment with Commonwealth.

Claimant alleged that Respondent's employment was terminated on May 12, 1994. Claimant further alleged that Respondent failed to repay the advance despite demand. Specifically, Claimant alleged that Respondent ignored a demand letter sent by Irving Trager, Commonwealth's Executive Officer, dated December 5, 1994.

RELIEF REQUESTED

Claimant requested it be awarded the sum of \$4,925.45, representing the remaining amount of Respondent's debt. In addition, Claimant requested reimbursement for the costs incurred in the past attempts to collect such debt, plus its costs and attorneys' fees incurred in this proceeding, and simple prejudgment interest as provided for by Section 3004 of the New York CPLR.

OTHER ISSUES CONSIDERED AND DECIDED

1. The arbitration panel made the following rulings concerning Respondent, Christian Eminente who failed to appear at the evidentiary hearing conducted in this matter:
 - a. Pursuant to Section 1 of the NASD Code of Arbitration Procedure, the arbitrator found subject matter jurisdiction over this entire controversy.
 - b. The arbitrator found that the Respondent, Christian Eminente, was a member of the NASD at the time the controversy arose. Consequently, the arbitrator found personal jurisdiction over the Respondent, Christian Eminente, pursuant to Section 12 of the NASD Code of Arbitration Procedure.
 - c. In view of (2) above, the arbitrator found that Respondent, Christian Eminente, was required to file with the NASD a Statement of Answer and a properly executed Submission Agreement pursuant to Section 25(b) of the NASD Code of Arbitration Procedure. In this regard, the arbitrator found that the Statement of Claim was properly served upon the Respondent, Christian Eminente, pursuant to Section 25(a) of the Code.
 - d. In addition, in accordance with Sections 21, 26 and 29 of the NASD Code of Arbitration Procedure, the arbitrator found that the NASD provided Respondent, Christian Eminente, with "due notice" of the hearing conducted in this matter by regular and certified mail. The arbitrator, therefore, determined to proceed with the hearing without Respondent, Christian Eminente, whose absence was unexcused.

2. 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable and shall pay to Claimant, Commonwealth Associates, the sum of \$4,925.45, with prejudgment interest of \$811.25;
2. Respondent is liable and shall pay to Claimant the sum of \$240.00 representing Claimant's attorneys' fees; and,
3. Respondent shall pay to Claimant the sum of \$300.00 representing Claimant's hearing session deposit.
4. All other requests for relief are denied.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

Total Forum Fees: \$300.00

(1 Session x \$300)

Respondent is assessed the amount of \$300.00 representing the total forum fees, less \$300.00 paid, leaving \$0.00 due.

ARBITRATOR'S SIGNATURES

E. Stephen Walsh

E. Stephen Walsh, Esq.
Chairperson/Sole Industry Arbitrator

Date of decision: 5/22/96

I, E. Stephen Walsh, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

E. Stephen Walsh

E. Stephen Walsh, Esq.