

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Mary L. Clark

95-02157

Name of Respondents

Jacqueline A. Moody
Robert Thomas Securities, Inc.

Name of Crossclaimant

Robert Thomas Securities, Inc.

Name of Crossclaim Respondent

Jacqueline A. Moody

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 4, 1995, Claimant Mary L. Clark ("Claimant"), who appeared Pro Se, alleged that Respondent Jacqueline A. Moody ("Moody"), as a registered representative of North American Financial Group ("NAFG"), entered into an agreement with her in which she would become licensed in the securities industry and would simultaneously become affiliated with NAFG. Claimant further alleged that the relationship continued from July, 1992 through March, 1993, during which time commissions were regularly paid to Claimant by Moody, however, commissions earned immediately preceding Moody's departure from NAFG in March of 1993 were not paid. Claimant contended that from March 29, 1993 until March, 1994, she continued doing business in this manner while Moody was employed by Respondent Robert Thomas Securities, Inc. ("RTSI"). Claimant further contended that not only did Moody not pay Claimant her share of the commissions generated, but she assumed the role of registered representative over Claimant's former clients without their consent. Claimant alleged that RTSI, as Moody's employer, failed to adequately supervise Moody's payment of commissions, and thus is jointly liable. Claimant further alleged that as a result of the above, she has suffered a loss for which the Respondents should be held liable.

Respondent Jacqueline A. Moody, who appeared Pro Se, maintained that unpaid commissions to Claimant upon leaving NAFG were an attempt to adjust accounting records for monies she had been paid inappropriately since they were generated prior to her becoming a licensed registered representative and

are thus illegal under NASD Rules of Fair Practice, even though a "special house account" was used to pay non-licensed representatives. Respondent further maintained that both she and Claimant voluntarily left NAFG and became affiliated with RTSI and that no former client of Claimant was switched against their wishes, and neither was any documentation relating to these same clients' transactions withheld from Claimant. Respondent contended that, notwithstanding disputed or undocumented figures, Claimant already accepted "settlement in full of all claims against commissions owing" in accepting and cashing the May 17, 1994 check from Respondents to Claimant. Respondent further contended that as a result of the above, she should not be held liable.

Respondent Robert Thomas Securities, Inc., through its representative and in-house counsel, Michael R. Alford, Esq., maintained that on March 20, 1993, Respondent Moody entered into an Affiliation Agreement as an Independent Sales Associate with RTSI and which terms specifically stated "this Agreement shall not be deemed to create an agency, employment, or joint venture relationship." Respondent further maintained that on April 8, 1993, Moody entered into a Registered Representative agreement with Claimant which informed her she employed or registered by Moody as an independent contractor not RTSI. Respondent further contended that it has no obligation or duty to compensate Claimant nor does it have a duty to supervise the distribution of payroll to Moody's employees. Respondent maintained that as a result of the above, it should not be held liable.

In a Crossclaim filed with the National Association of Securities Dealers, Inc., Respondent Robert Thomas Securities, Inc., through its representative and in-house counsel, Michael R. Alford, Esq., alleged that pursuant to the Indemnification Clause contained in the Affiliation Agreement with Moody, any recovery deemed appropriate should be applied solely against Moody.

The Crossclaim Respondent, Jacqueline A. Moody, failed to file a Statement of Answer to the Crossclaim.

RELIEF REQUESTED

Claimant Mary L. Clark, requested \$1,897.98 in actual damages, plus costs.

Respondent Robert Thomas Securities, Inc., requested that the claims of the Claimant be dismissed in their entirety.

Respondent Jacqueline A. Moody, requested that the claims of the Claimant be dismissed in their entirety.

Crossclaimant Robert Thomas Securities, Inc., requested that it be indemnified for any liability arising from the claims of the Claimant, plus attorney' fees.

The Crossclaim Respondent Jacqueline A. Moody, failed to file a Statement of Answer to the Crossclaim.

AWARD

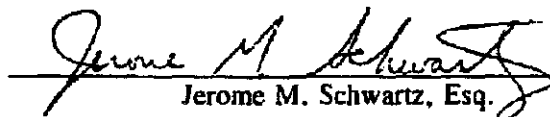
Pursuant to Section 10 of the NASD, Inc. Code of Arbitration Procedure, a single Industry Arbitrator, Jerome M. Schwartz, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Mary L. Clark, on April 12, 1995, and by the Respondent Jacqueline A. Moody, on May 30, 1995, and by Respondent Robert Thomas Securities, Inc., on June 6, 1995.

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 Mary L. Clark, against Respondent Robert Thomas Securities, Inc., are denied in their entirety.
2. The Respondent Jacqueline A. Moody, is liable and shall pay to the Claimant Mary L. Clark, \$1,000.00 in actual damages.
3. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Mary L. Clark, shall be retained by the NASD, Inc. The Respondent Jacqueline A. Moody, is liable and shall pay to the Claimant Mary L. Clark, \$575.00 as reimbursement of the filing fee.
4. The Crossclaims of Respondent Robert Thomas Securities, Inc., against Respondent Jacqueline A. Moody are dismissed in their entirety.
5. The \$575.00 Crossclaim filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Respondent Robert Thomas Securities, Inc., shall be retained by the NASD, Inc.

AFFIRMATION

I, **JEROME M. SCHWARTZ, 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.


Jerome M. Schwartz, Esq.

DATE OF DECISION: February 9, 1996