

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Richard Gross

vs.

CASE NO.
95-02755

Name of Respondents

Reich & Co., Inc.
Joseph Tito

REPRESENTATION

Claimant Richard Gross ("Claimant") appeared pro se.

For Respondent Joseph Tito ("Tito") appeared James M. Maiello, Esq., of the law firm of Anile & Associates Attorneys and Counselors at Law, located in Glen Cove, New York.

For Respondent Reich & Co., Inc. ("Reich") appeared Eric Shames, Esq., in-house counsel for Fahnestock & Co., located in New York, New York.

CASE INFORMATION

A Statement of Claim was filed on June 8, 1995
Claimant's Submission Agreement was signed on May 31, 1995.

A Statement of Answer was filed by Respondent Tito on August 22, 1995.
Respondent Tito's Submission Agreement was signed on August 18, 1995.

A Statement of Answer was filed by Respondent Reich on July 25, 1995.
An additional submission was filed by Respondent Reich on December 20, 1995.
Respondent Reich did not file a Submission Agreement.

HEARING INFORMATION

Hearing Date/Sessions: April 19, 1996 - Two Sessions

The hearing was held at the offices of the National Association of Securities Dealers, Inc. located in New York City, New York.

CASE SUMMARY

Claimant alleged that from June, 1992 to October, 1992 he was employed by Respondent Reich as a registered representative. Claimant also alleged that Respondent Tito was a registered compliance officer and as such is a controlling person as defined under Section 20 of the Exchange Act of 1934. Claimant contended that weeks prior to his resignation, he was led to believe that Reich was being sold. Claimant eventually resigned but did not receive compensation allegedly due to him. Claimant alleged that he was told that if he pursued the matter his license would be "marked-up." Claimant also contended that Respondents sought out and generated false complaints from his customers which were determined to be without merit.

Moreover, Claimant alleged that Respondents' conduct has caused him loss of business opportunities and has damaged his reputation. Claimant also alleged that as a result of the above, he has suffered a loss for which the Respondents should be held liable.

Respondent Tito maintained that he directed the compliance functions for Reich and at all time acted within the scope of his duty. Respondent further maintained that he was not a corporate officer, a member of the board of directors or a stockholder of Reich and as such has no liability for Claimant's losses. Respondent also maintained that control person liability applies to violations of the Securities Exchange Act of 1934 and that no violation of that act occurred. Respondent contended that he cannot be held liable in place of Reich, a corporation. Respondent further contended that all actions taken with respect to Claimant's NASD Uniform Termination Notice for Securities Registration (U-5) were in accordance with all applicable NASD regulations and as a result, he should not be held liable.

Respondent Reich maintained that Claimant's allegations concern Reich & Co., which is now known as 500 Hanover, Inc., a New York corporation. Respondent further maintained that it is now associated with Fahnestock & Co., Inc. and is not the proper party. Respondent also maintained that it was known as Vantage Securities, Inc. until December 1992 and has always been incorporated in the State of Alabama. Respondent contended that Claimant was associated with Reich & Co., Inc. which had CRD No. 3148, not CRD No. 19611. Respondent further contended that Claimant's CRD report bears out the proposed CRD distinction. Respondent also contended that as a result of the above, it should not be held liable.

RELIEF REQUESTED

Claimant requested damages in excess of \$12,000.00 representing withheld commissions, \$250,000.00 for lost income and business, interest at the rate of 10%, damages for emotional distress, reasonable fees and costs, and other relief as the arbitrators deem proper.

Respondent Tito requested that the claims of the Claimant be dismissed in their entirety and that he be granted costs.

Respondent Reich requested that the claims of the Claimant be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

By letters dated July 25, 1995 and December 20, 1995, Reich & Co., Inc. requested that it be dismissed from this proceeding as it alleged it is not a proper party in interest. The panel considered and denied this motion.

The parties have agreed that the Award in this matter may be executed in counterpart copies or 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. Respondents Reich & Co., Inc., now a part of, or subsumed by Fahnestock & Co., Inc. and allegedly an Alabama corporation, and Joseph Tito are jointly and severally liable and shall pay to the Claimant Richard Gross \$6,000.00 in actual damages.
2. Respondent Reich & Co., Inc. is ordered to amend the October 12, 1992 U-5 CRD record of Claimant Richard Gross. Respondent Reich & Co., Inc. is directed to amend the U-5 to reflect Claimant's voluntarily resignation and shall respond "no" to all questions.
3. Each party shall bear their respective costs, including attorneys fees.
4. All other relief requests are denied.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 non-refundable filing fee previously deposited by Claimant and have assessed the following forum fees:

Two Sessions (2) x \$750.00 = \$1,500.00

Respondent Reich & Co., Inc. now a part of or subsumed by Fahnestock & Co., Inc. and allegedly an Alabama corporation, be and hereby liable for sum of \$1,500.00 representing the total amount of the forum fees assessed.

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

ARBITRATORS' SIGNATURES

David Crystal, II.
David Crystal, II. - Chairperson

Industry

Sheldon Lasher

Industry

Catherine Ladnier

Industry

AFFIRMATION

I, David Crystal, II., do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

David Crystal, II.
David Crystal, II.

I, Sheldon Lasher, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

Sheldon Lasher

I, Catherine Ladnier, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

Catherine Ladnier

Date of Decision: September 17, 1997

ARBITRATORY SIGNATURES

David Crystal, II. - Chairperson

Industry

Sheldon Lasher

Industry

Catherine Lasher
Catherine Lasher

Industry

AFFIRMATION

I, David Crystal, II., do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

David Crystal, II.

I, Sheldon Lasher, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

Sheldon Lasher

I, Catherine Lasher, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

Catherine Lasher
Catherine Lasher

Date of Decision: September 17, 1996