

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

The Harriman Group, Inc.

95-03506

Name of Respondent

David Scott Heredia

REPRESENTATION

For Claimant the Harriman Group, Inc. ("claimant") appeared Leslie K. Case, Esq. of Gersten, Savage, Kaplowitz & Curtin, New York, New York.

For Respondent David Heredia ("respondent") appeared James R. Leone, Esq. Altamonte Springs, Florida.

CASE INFORMATION

Statement of Claim filed: July 24, 1995

Claimant's Submission Agreement signed on July 17, 1995.

Statement of Answer filed by Respondent on February 21, 1996.

Respondent's Submission Agreement signed on February 21, 1996.

HEARING INFORMATION

Hearing Date/Sessions: December 26, 1996/ One session

The hearing session was held among the arbitrators by telephone.

CASE SUMMARY

Claimant stated that it is a licensed broker dealer and a member of the NASD. Claimant also stated that respondent is a broker who holds a Series 7 license with the NASD.

Claimant alleged that, on or about May 22, 1995, it entered into an employment agreement with respondent pursuant to which respondent was to work with claimant as a broker for five years. Claimant alleged that respondent advised claimant that respondent would be quickly registered as a broker. Claimant alleged that respondent was unable to be registered in a timely manner due to certain "yes" answers on his Form U-4. Claimant also alleged that during his tenure with claimant, respondent did not

deal with customers. Claimant alleged that, in anticipation that respondent would be registered and able to work as a broker, and based upon assurances that respondent would stay with claimant as agreed, claimant made two advances of \$5,000.00 each to respondent. Claimant alleged that these two advances were to be paid out of commissions earned by respondent.

Claimant alleged that respondent asked claimant to allow him to deal with customers and make sales in violation of NASD rules. Claimant alleged that it refused to allow respondent to deal with the public. Claimant asserted that respondent left claimant's employ to take a position with another broker dealer which would allegedly allow respondent to make sales while awaiting registration. Claimant alleged that respondent left its employ without repaying the two \$5,000.00 advances.

Respondent denied that he ever advised claimant that he would be able to be licensed quickly. Respondent maintained that he had been a licensed broker with his previous employer at the time he was solicited to join claimant's employ by claimant's co-owner on or about April 22, 1995. Respondent asserted that his previous employer had gotten him registered in three weeks and further stated that claimant was itself under investigation at the time. Respondent alleged that it was this investigation which resulted in a delay in processing respondent's registration.

Respondent maintained that claimant should not have disbursed monies which it knew, or should have known, would be applied towards the moving expenses of respondent and three support staff. Respondent alleged that claimant misled him and induced him to work for claimant with speculative, misleading and fraudulent information. Respondent alleged that he was, therefore, under no obligation to repay the expense disbursements made by claimant. Alternatively, respondent alleged that the claimant's acts and omissions excused repayment by respondent.

Respondent also asserted that he did not solicit clients while employed by claimant and alleged that claimant suggested on several occasions that respondent use another representative's license to solicit or solicit unlicensed while waiting to be licensed. Respondent maintained that he refused to solicit clients while unlicensed.

Respondent alleged that a conflict of interest between him and claimant was created by claimant's repeated insistence that respondent solicit customers before being properly registered in violation of NASD registration rules. Respondent claims that he was, therefore, forced to resign.

Respondent also asserted that claimant is estopped from enforcing an employment contract after claimant made respondent's performance impossible or commercially impractical. Respondent alleged that claimant failed to provide consideration required under the employment agreement, committed fraud in inducing respondent to enter into the employment agreement and placed respondent under duress to violated NASD rules and other legal requirements. Respondent maintained that claimant waived legitimate claim to repayment of all amounts advanced to or for his benefit when it created impossible or commercially impractical working conditions which forced him to obtain alternative employment.

Respondent claimed that he relied upon the assurances of claimant in good faith and alleged that claimant breached its promises and representations. Respondent alleged that he consequently incurred damages in lost income and additional expenses upon being forced to resign and relocate to another firm.

RELIEF REQUESTED

Claimant requested repayment of \$10,000.00 it advanced to respondent in addition to \$1200.00 it laid

out on respondent's behalf. Claimant also requested reasonable attorney's fees, interest, costs and disbursements, punitive damages and such other relief as the panel deemed just and proper.

Respondent requested judgment against claimant for damages estimated in excess of \$15,000.00 plus reasonable attorney's fees and prejudgment interest along with costs and disbursements, punitive damages and such other relief as the panel deemed appropriate.

OTHER ISSUES CONSIDERED & DECIDED

The hearing in this matter was scheduled for November 6, 1996. Prior to the scheduled hearing, claimant advised the NASD that respondent's counsel had withdrawn from the case and that respondent would not appear at the hearing. On November 9, 1996, the NASD received written notification from respondent's counsel that he had withdrawn as counsel. As a result of this information, claimant requested that the hearing be adjourned and that the panel consider and determine this matter based upon the pleadings and other documents filed. The panel granted claimant's request. The panel requested that the NASD advise respondent, if possible, of its decision. On November 18, 1996, the NASD sent a letter to respondent at his last known address, return receipt requested, advising respondent of the claimant's request and the panel's decision. The return receipt indicates that this letter was received on December 2, 1996. By letter dated December 10, 1996, the NASD advised the panel that the return receipt had been received and that respondent had not contacted the NASD. The panel reviewed the pleadings and documentary evidence and held a telephonic session to discuss the award on December 26, 1996.

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 original(s) remain on file with the NASD.

AWARD

After considering the pleadings and the documentary evidence presented, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent shall pay to claimant the sum of \$11,094.50;
2. All other claims of either party are denied;
3. Forum fees and filing fees shall be assessed against respondent.

FORUM FEES

Pursuant to Section 43c/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. Respondent be and hereby is liable for the sum of \$500.00 and owes claimant the sum of \$500.00.

The arbitrators have assessed the following forum fees:

| | |
|--|-------------------|
| 1 session x \$300.00 = | \$300.00 |
| minus hearing session deposit submitted by claimant | - <u>\$300.00</u> |
| TOTAL | 0 |

Respondent be and hereby is liable for the sum of \$300.00 representing the forum fees assessed.
Respondent owes claimant the sum of \$300.00.

Concurring Arbitrator's Signature

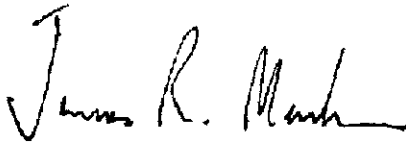
Name



James R. Madan

NASD Date of Decision: February 4, 1997

I, James R. Madan, do hereby certify that this is my decision in the above-referenced matter.

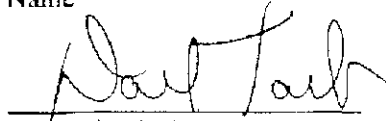


James R. Madan

Respondent be and hereby is liable for the sum of \$300.00 representing the forum fees assessed.
Respondent owes claimant the sum of \$300.00.

Concurring Arbitrator's Signature

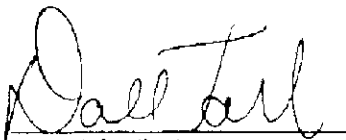
Name



Daniel S. Taub

NASD Date of Decision: February 4, 1997

I, Daniel S. Taub, do hereby certify that this is my decision in the above-referenced matter.



Daniel S. Taub

Respondent be and hereby is liable for the sum of \$300.00 representing the forum fees assessed.
Respondent owes claimant the sum of \$300.00.

Concurring Arbitrator's Signature
Name



Sheldon Lasher

NASD Date of Decision: February 4, 1997

I, Sheldon Lasher, do hereby certify that this is my decision in the above-referenced matter.



Sheldon Lasher