

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

The Ohio Company,

Claimant and Counter-Respondent,

and

No. 95-03512

C. David Dickinson,

Respondent and Counter-Claimant.

REPRESENTATION OF PARTIES

Claimant and Counter-Respondent The Ohio Company ("Claimant") was represented by Marion H. Little, Jr., Esquire and John W. Zeiger, Esquire of Zeiger & Carpenter located in Columbus, Ohio.

Respondent and Counter-Claimant C. David Dickinson ("Respondent") was represented by Iris K. Linder, Esquire and Michael H. Perry, Esquire of Fraser Trebilcock Davis & Foster, P.C. located in Lansing, Michigan.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about July 20, 1995.

Claimant The Ohio Company's Submission Agreement was signed on July 14, 1995 by James A. Francis, Senior Vice President of The Ohio Company.

Respondent's Statement of Answer and Counterclaim was filed on or about November 26, 1996.

Respondent's First Amended Statement of Answer and Counterclaim was filed on or about November 27, 1996.

Claimant The Ohio Company's Statement of Answer to the Counterclaim was filed on or about December 6, 1996.

NASD Regulation records do not indicate that Respondent filed a submission agreement with NASD Regulation, Inc. Office of Dispute Resolution.

Respondent's Post-Hearing Brief Regarding Claimant's Breach of Duty was filed on or about January 31, 1997.

Claimant's Reply to Respondent's Post-Hearing Brief was filed on or about February 18, 1997.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on December 3, 1996 for two (2) sessions and January 13, 1997 for two (2) sessions.

The hearing was held in Detroit, Michigan.

CASE SUMMARY

Claimant The Ohio Company alleged that Respondent C. David Dickinson owed the balance due on a promissory note, plus damages resulting from his unjust enrichment. Claimant contended that, on or about July 22, 1993, Claimant and Respondent entered into a loan agreement called "The Ohio Company Loan Agreement" (the "Agreement"). Claimant asserted that, pursuant to the Agreement, Claimant loaned Respondent \$65,470 in return for a promissory note (the "Note") executed by Respondent for the amount of \$65,470. Claimant contended that the Note had an acceleration clause such that if Respondent voluntarily or for cause ceased to be an employee of The Ohio Company, or was in default under any of the terms of the Note or the Agreement, then the Note was to be immediately due and payable. Claimant asserted that, on or about March 24, 1995, Respondent voluntarily terminated his employment with The Ohio Company, and that since only \$470 of the \$65,470 loan had been forgiven pursuant to the terms of the Note and the Agreement, Respondent was liable for the remaining balance plus consequential damages.

Respondent denied all liability to Claimant in the Statement of Answer and Counterclaim. Respondent admitted signing the Agreement and the Note, but asserted that he was fraudulently induced to sign these documents, and that they were invalid, not binding, and illegal. Respondent contended that he did not voluntarily terminate his employment, but was constructively terminated through the actions of The Ohio Company.

Respondent alleged that Claimant disrupted and interfered with his partnership with another account executive, David Green ("Green"). Respondent maintained that Claimant knew before or during the time it recruited him that he had a contractual relationship to work as a partner with Green. Respondent asserted that Claimant hired Green, agreed that Respondent and Green would work as a partnership, and agreed that Respondent and Green would share the management of invested assets and all respective commissions on an equal basis. Respondent further asserted that Claimant had failed to abide by its agreement and had engaged in wrongful and unlawful acts designed to interfere with Respondent and Green's contractual relationship, such as assigning more assets to Green, not splitting commissions between Green and Respondent equally, and by inducing customers to conduct business solely with Green. Respondent asserted the following claims, including, but not

limited to: (1) tortious interference with contractual relations; (2) tortious interference with prospective economic advantage; (3) breach of fiduciary duty; and (4) constructive discharge.

Claimant alleged that it knew of the contractual relationship between Respondent and Green at the time they were hired, and that it agreed to permit Respondent and Green to work as a partnership whereby they would distribute their proceeds on an equal basis. Claimant denied the remaining allegations contained in Respondent's Counterclaim. Claimant asserted the following defenses to Respondent's Counterclaim, including, but not limited to: (1) that Respondent's claims are barred in whole or in part by the Michigan statute of frauds; (2) that Respondent's claims are barred in whole or in part by the Michigan Uniform Partnership Act; and (3) that Respondent's Counterclaim fails to state a claim upon which relief may be granted.

RELIEF REQUESTED

Claimant The Ohio Company requested an award for compensatory damages in the amount of \$65,000, plus pre-judgment and post-judgment interest, and its costs and attorneys' fees incurred in this matter. Claimant The Ohio Company also requested that the Counterclaim be dismissed with prejudice, and that it be awarded its costs and attorney's fees incurred thereon.

Respondent C. David Dickinson requested that the claims asserted against him be denied and that he be awarded his costs and attorney fees incurred in this matter. Respondent C. David Dickinson also requested an award for compensatory damages in the amount of at least \$200,000.00 plus interest, costs and attorney fees incurred thereon.

OTHER ISSUES CONSIDERED & DECIDED

Respondent C. David Dickinson did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration, but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent and Counter-Claimant C. David Dickinson is liable for and shall pay to Claimant and Counter-Respondent The Ohio Company compensatory damages in the amount of Forty Thousand Dollars and No Cents (\$40,000.00), which sum shall be paid to Claimant and Counter-Respondent The Ohio Company in monthly installments of One Thousand Three Hundred Thirty Three Dollars and No Cents (\$1,333.00) for thirty (30) months on the first day of every month following the receipt of this Award. The remaining sum of Ten Dollars and No Cents (\$10.00) shall be paid to Claimant and Counter-Respondent The Ohio Company on the first day of the thirty-first (31st) month following the receipt of this Award,
2. That Respondent and Counter-Claimant C. David Dickinson's Counterclaim is hereby dismissed in its entirety with prejudice; and
3. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were four (4) hearing sessions $\times \$600 = \$2,400$ in forum fees. Pursuant to §10205(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10205(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$500 and shall **retain** as forum fees the hearing session deposit in the amount of \$600 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant The Ohio Company. Pursuant to §10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$300 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant The Ohio Company.

Claimant The Ohio Company is liable for and shall pay to NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$600.

Pursuant to §10205(c) of the Code, Respondent C. David Dickinson is liable for and shall pay to NASD Regulation, Inc. Office of Dispute Resolution the non-refundable filing fee associated with the filing of the counterclaim in the amount of \$500. Pursuant to §10205(c) of the Code, Respondent C. David Dickinson is liable for and shall pay to NASD Regulation, Inc. Office of Dispute Resolution the postponement fee in the amount of \$600. Pursuant to §10205(c) of the Code, Respondent David Dickinson is liable for and shall pay to NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$1,200.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures

\s\ Ronald S. Longhofer, Esquire
Ronald S. Longhofer, Esquire
Chairman
Industry Arbitrator

March 17, 1997
Dated:

\s\ H. Duane Billmeyer, Jr.
H. Duane Billmeyer, Jr.
Panelist
Industry Arbitrator

March 10, 1997
Dated:

\s\ Frank G. Bank
Frank G. Bank
Panelist
Industry Arbitrator

March 8, 1997
Dated:

For NASD Regulation use only:
Date Award served on the parties: March 21, 1997