

## NASD AWARD

## NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration BetweenName of Claimant

The Harriman Group, Inc.

Case No. 95-04117

Name of Respondent

Yossi Yakar

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REPRESENTATION

Claimant The Harriman Group Inc. ("Claimant") was represented during the pleadings stage by Robert Krakow, Esq., of New York, NY.

Respondent Yossi Yakar ("Respondent") was represented during the pleadings stage by M. David Sayid, Esq., of the law firm of Sayid and Associates, Hackensack, NJ.

CASE INFORMATION

Statement of Claim filed: August 24, 1995

Claimant's Submission Agreement signed on: August 16, 1995

Statement of Answer filed by Respondent on: October 25, 1995

Respondent did not file a Submission Agreement.

HEARING INFORMATION

Hearing Date/Sessions: July 30, 1998/one session

Hearing Location: NASD Regulation, Office of Dispute Resolution, New York, NY

CASE SUMMARY

Claimant alleged, among other things, that on or about August 9, 1994, Claimant made a written employment agreement in which Respondent was to work for Claimant as a broker for five years. Claimant alleged that the agreement also provided that if Respondent resigned before the contract expired, Respondent would reimburse Claimant \$10,000. Claimant alleged that it expended substantial funds and energy for Respondent's benefit on training and related expenses. Claimant alleged that in January 1995, Respondent wrongfully resigned his employment with Claimant before the expiration of the employment contract. Claimant alleged that Respondent's breach of contract resulted in a loss of the funds and expenses used to train Respondent during his employment.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically maintained, among other things, that he was employed by Claimant on or about April 1994 as a "cold

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caller." Respondent maintained that he was studying for the Series 7 and Series 63 Examinations while cold calling for Claimant. Respondent maintained that he was told he had to execute an agreement by Claimant's Compliance Department one day after successfully completing his Series 7 Qualification Examination. Respondent maintained that Stephanie Gaskil ("Gaskil") of the Compliance Department stated to Respondent that all new brokers had to execute an agreement in order to work for Claimant. Respondent maintained that after asking questions of Gaskil, she stated that this was merely a formality and that it didn't mean anything. Respondent maintained that he reluctantly executed the agreement after several heated interactions with Gaskil. Respondent maintained that he never received any training from Claimant. Respondent maintained that he was debited for expenses related to registration fees and mailing costs, and did not receive a commission check due to debits over the last four months of his employment. Respondent maintained that Claimant's encouragement of the use of high pressure tactics was the proximate cause of Respondent's resignation on or about January 1995.

Respondent maintained that the agreement was punitive in nature and lacked consideration on Claimant's part and should be declared null and void. Respondent raised an affirmative defense of good faith.

#### RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$14,165.80; reasonable attorneys' fees; interest; costs and disbursements; and such other relief as the Panel deems just and proper.

Respondent requested that the Statement of Claim be denied in its entirety; that Respondent be awarded the costs, fees, expenses and reasonable attorneys' fees in an amount not less than \$5,000.00; that the Panel grant such other relief it deems justice and equity require.

#### OTHER ISSUES CONSIDERED & DECIDED

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 Regulation, Inc. ("NASD Regulation")

Respondent did not file with the NASD Regulation, Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10201 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim is bound by the determination of the arbitration panel on all issues submitted.

Though a hearing was held on July 30, 1998, neither of the parties or their representatives appeared at the hearing.

#### AWARD

After considering the pleading, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That the case be dismissed with prejudice on the record.

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2. That the parties shall bear their own costs and attorneys' fees, except as Forum Fees are addressed herein.
3. That any and all relief not specifically addressed above is denied in its entirety.

#### OTHER COSTS

Pursuant to Rule 10333 of the Code, Claimant was assessed a member surcharge of \$200.00 that has not been paid.

#### FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fee is assessed,

(1 hearing session x \$300.00) = \$300.00 - Claimant's hearing session deposit of \$300.00 = 0 net due

The forum fee of \$300.00 is assessed equally between Claimant and Respondent.

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

DATE

ARBITRATOR'S SIGNATURE

Aug. 18, 1998

Judith R. MacDonald  
Judith R. MacDonald, Esq., Chairperson  
Public Arbitrator

Date Award Served by NASD Regulation: \_\_\_\_\_

I, Judith R. MacDonald, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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Judith R. MacDonald, Esq.