

NASD REGULATION, INC. AWARD

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

M.S. Farrell & Co., Inc.

95-04177

Name of Respondent

Edward Grey

REPRESENTATION

For Claimant, M.S. Farrell & Co., Inc. ("claimant"), appeared James L. Rothenberg, Esq., New York, New York.

Respondent, Edward Grey, ("respondent") appeared pro se.

CASE INFORMATION

Statement of Claim filed: August 30, 1995.

Amended Statement of Claim filed: November 7, 1995.

Claimant's Submission Agreement signed on: August 29, 1995.

Statement of Answer filed by Respondent: October 20, 1995.

Respondent's Submission Agreement signed on: October 19, 1995.

HEARING INFORMATION

Pre-Hearing Conference:	February 14, 1997	One Session
Hearing Dates/Sessions:	February 19, 1997	Two Sessions
	March 10, 1997	Two Sessions

Hearing Location: The hearing on February 19, 1997 was held at the City Midday Club, 120 Broadway, New York, N.Y. The hearing on March 10, 1997 was held at the offices of NASD Regulation, Inc.

CASE SUMMARY

Claimant alleged that respondent breached his employment contract with claimant. Claimant alleged that it entered into an Employment Agreement ("Agreement") with respondent as of September 22, 1994 pursuant to which respondent was to receive compensation in the form of three (3) consecutive draws against commissions. Claimant alleged that respondent was a Senior Vice President and registered

representative with claimant until respondent resigned in May 1995. Claimant also alleged that respondent agreed to pledge 7,000 shares of a stock called Las Vegas Entertainment ("LVEN") as collateral for the first draw of \$2,500.00. Claimant asserted that the 7,000 shares of stock were to be released to respondent only after full repayment by respondent of the sum total of the drawn commissions.

Claimant asserted that, pursuant to the Agreement, respondent received \$2,500.00 on September 26, 1994, \$2,500.00 on November 8, 1994, \$5,000.00 on December 5, 1994 and \$5,000.00 on January 4, 1995 as draws against commissions. Claimant also alleged that \$1,000.00 was withheld from respondent on March 15, 1995 and another \$1,000.00 was withheld on April 15, 1995. Claimant stated that, after respondent's resignation in May 1995, claimant retained respondent's commission check of \$2,314.25 payable May 15, 1995 and his commission check of \$887.75 payable June 15, 1995 as offsets to the draws against commissions respondent had been given.

Claimant alleged that the Agreement provided for full repayment of the balance of \$9,798.00 the earlier of six months after respondent's employment date of September 26, 1994 or on the date of respondent's resignation. Claimant also alleged that since the six month period expired on March 26, 1995, before respondent's resignation, respondent owed claimant \$9,798.00 on March 26, 1995. Claimant asserted that it made a demand upon respondent for payment of the monies owed on the day that respondent resigned. Claimant also contended that respondent refused to make the required payment.

Respondent generally denied the allegations made by claimant. Respondent maintained that he entered into the Agreement with claimant pursuant to which he would receive three (3) draws against commissions. Respondent contended that he pledged 7,000 shares of LVEN as collateral for repayment of only the first \$2,500.00 draw and not for the sum total of the draws and further contended that claimant continues to improperly hold respondent's LVEN stock in both his IRA and personal accounts pending repayment of \$9,798.00. Respondent denied that he owed claimant the additional sum of \$9,798.00.

Respondent also maintained that claimant has materially breached the Agreement causing him damage in excess of the \$9,798.00 claimant seeks. Respondent maintained that claimant, pursuant to the terms of the Agreement, was required to provide respondent with the services of a broker-trainee to assist him in his position. Respondent contended that claimant failed to provide him with a broker-trainee for at least five months after he was hired and further contended that this failure negatively impacted his business.

Respondent also alleged that claimant breached the Agreement by imposing conditions on his employment which were not contained in the Agreement. Respondent alleged that claimant advised him, subsequent to signing the Agreement, that he was required to be at the office by 8:15 a.m. and could not leave until 7:00 p.m. and further that he would be fined \$1,000 per instance in which he did not comply with this schedule. Respondent maintained that claimant then forced him to resign when respondent did not meet these conditions.

Respondent also maintained that claimant, after forcing him to resign for failure to meet this scheduling condition, began a campaign of slandering respondent in conversations claimant had with respondent's clients. Respondent alleged that this campaign succeeded in decimating his business. Respondent also alleged that claimant misrepresented the status of LVEN, which respondent had recommended to many of his clients, in order to force respondent's clients to liquidate their holdings in LVEN and buy a security recommended by claimant. Respondent alleged that claimant was able to retain respondent's customer accounts in this manner.

Respondent, in his counterclaim, maintained that claimant breached the Agreement by not providing respondent with a broker-trainee, by forcing respondent to resign and by slandering respondent in conversations with respondent's clients. Respondent also claimed that claimant has improperly held his LVEN stock in both his IRA and personal accounts.

Claimant replied to respondent's counterclaim and maintained that respondent was provided with a broker-trainee pursuant to the Agreement. Claimant also contended that respondent had been advised by its president that respondent would be expected to be present during regular office hours between 8:15 a.m. and 7:00 p.m. and to attend morning staff meetings of all brokers. Claimant maintained that respondent did not object to this company policy.

Claimant also responded that respondent's clients were advised, after respondent's resignation, that LVEN was not a security recommended or followed by claimant. Claimant further contended that the Agreement specifically provided that respondent agreed to pledge 7,000 shares of LVEN as collateral for the first draw against commissions which would be released only upon full repayment of the sum total of all draws which had been made.

RELIEF REQUESTED

Claimant requested \$9,798.00 pursuant to the Agreement, interest at the legal rate from March 26, 1995 and all fees associated with bringing this arbitration.

Respondent requested dismissal of the Statement of Claim in its entirety, damages on his counterclaim in an amount to be determined at the hearing but not less than \$50,000 and such other and further relief as the panel deems just and appropriate.

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 NASD Regulation, Inc.

The panel determined that the respondent is liable for and shall pay the postponement fee of \$600.00 for the postponement of the hearing scheduled for February 18, 1997.

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. Respondent be and hereby is liable to and shall pay claimant the sum of \$7298.00.
2. Respondent's counterclaim is denied in its entirety.
3. All other requests for relief are denied.
4. Each party shall bear its own costs including attorney's fees.

FORUM FEES

Pursuant to Rule 10205 of the Code of Arbitration Procedure, the panel has determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee submitted by claimant and the \$500.00 non-refundable filing fee submitted by respondent and have assessed the following Forum Fees:

1 prehearing conference X \$600.00	=	\$600.00	
4 hearing sessions X \$600.00	=	\$2400.00	=
minus claimant's hearing session deposit	-	\$75.00	
minus respondent's hearing session deposit	-	<u>\$600.00</u>	
TOTAL OUTSTANDING	=	\$2325.00	

Claimant be and hereby is liable for the sum of \$1500.00 representing 50% of the forum fees assessed. Claimant has previously deposited \$75.00 and therefore owes NASD Regulation, Inc. the sum of \$1425.00.

Respondent be and hereby is liable for the sum of \$1500.00 representing 50% of the forum fees assessed. Respondent has previously deposited \$600.00 with NASD Regulation, Inc. and therefore owes the sum of \$900.00.

Respondent be and hereby is liable for the sum of \$600.00 for the postponement of the hearing scheduled for February 18, 1997.

Fees are payable to the NASD Regulation, Inc.

Concurring Arbitrators' Signatures

Name

Fred S. Pieroni

John B. Ryan

Sheldon I. Levy
Sheldon I. Levy, Esq.

I, Sheldon I. Levy, Esq., do hereby certify that this is my decision in the above-referenced case.

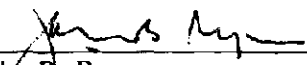
Sheldon I. Levy
Sheldon I. Levy, Esq.

NASD Date of Decision: APRIL 7, 1997

Concurring Arbitrators' Signatures

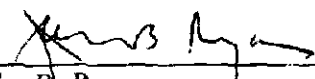
Name

Fred S. Pieroni


John B. Ryan

Sheldon I. Levy, Esq.

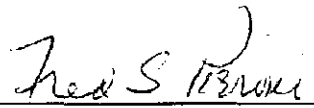
I, John B. Ryan, do hereby certify that this is my decision in the above-referenced case.


John B. Ryan

NASD Date of Decision: APRIL 7, 1997

Concurring Arbitrators' Signatures

Name

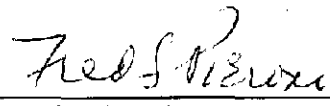


Fred S. Pieroni

John B. Ryan

Sheldon I. Levy, Esq.

I, Fred S. Pieroni, do hereby certify that this is my decision in the above-referenced case.



Fred S. Pieroni

NASD Date of Decision: APRIL 7, 1997