

NASD REGULATION, INC.

Name of Claimants

95-04602

Name of Respondents

REPRESENTATION

For Respondent, George Rosen ("Rosen"), appeared Ruthann G. Niosi, Esq., New York, New York.

CASE INFORMATION

Claimant's Response to Counterclaim filed January 29, 1996.

HEARING INFORMATION

Hearing Dates/Sessions:

October 28, 1996	-	One Session
February 5, 1997	-	Two Sessions

Hearing Dates/Sessions: February 6, 1997 - Two Sessions

The hearings were held at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that he is engaged in the securities business with his place of business located in New York City. Claimant further alleged that Cantella is a foreign corporation engaged in the securities business in New York City. Claimant asserted that he maintained an independent contractor relationship with Robert Thomas Securities Inc. ("RTS") a wholly owned subsidiary of Raymond James Financial, Inc. ("RJF"). Claimant alleged that, in return for Rosen canceling his registration with RTS to transfer his registration to Cantella, Claimant was promised a percentage of the gross revenue generated by Rosen to make up for revenues he would lose by Rosen's transfer. Claimant further alleged that on September 16, 1991, the parties entered into an agreement ("Agreement") reflecting this understanding. Claimant asserted he is unable to ascertain the full amount of revenues generated by Rosen during his employment at Cantella because he does not have access to records showing the amount of revenue Rosen has generated. Claimant contended that he has demanded Cantella produce records relating to the gross production of revenue generated by Rosen and that Cantella has failed and refuses to provide an accounting for the monies received by them. Claimant also contended that he is entitled to at least \$50,000.00 as the result of Rosen's gross production.

Respondents, in their Statement of Answer and Counterclaim, denied all of the allegations made by Claimant. Respondents asserted that the Agreement was not a valid contract because there was no privity between the parties and that the signatures affixed to the Agreement were fraudulently induced. Respondents further asserted that the Agreement called for commission splitting in violation of the rules and regulations of both the NASD and the New York Stock Exchange ("NYSE") and that the Agreement was unconscionable. Respondents also asserted there was no meeting of the minds and that the Agreement was never a contract because there was no consideration. Respondents contended there was fraud in the formation because there was no preexisting legal duty to permit Rosen to disassociate himself from Claimant and/or RTS and that Rosen's association was terminated by Claimant. Respondents also contended that the Agreement violated the Statute of Frauds. Respondents maintained that, if the Agreement is deemed to be a contract, it has been discharged because of the cessation of the relationship between the Respondents and Raymond James Financial, Inc. ("RJF"). Respondents further maintained, that if the Agreement obligated Cantella to pay Claimant, such payments must be computed solely on business which Harris could have and would have been permitted to generate while associated with RTS.

Respondents asserted in their Counterclaim that Claimant had tortiously interfered with the business relationship between Rosen and Cantella and that claimant, by his conduct, sought to interfere with all business which Rosen may seek to engage in within the brokerage industry.

Claimant, in his Reply to Respondents' Counterclaim, denied all of the allegations in the Counterclaim and asserted that Respondents failed to state a claim against which relief may be granted. Claimant also asserted that the Counterclaim was barred by the statute of limitations.

RELIEF REQUESTED

Claimant Robert Bruce Harris requested that Respondents account to Claimant for all revenues Cantella & Co. received as a result of Rosen's gross revenue production at Cantella; that he be awarded the sum or balance due to him from the Respondents and such other relief as may be just including the costs and disbursements of the action.

Respondents Cantella & Co., Inc. and George Rosen, in their joint Statement of Answer and Counterclaim requested that the Statement of Claim be dismissed in its entirety; that they be awarded \$500,000.00 as compensation for Claimant's actions; that they be awarded costs and disbursements incurred in this action and such other just and equitable relief that the Arbitrators deemed 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 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. All Claimant's claims are dismissed in their entirety.
2. Respondents' Counterclaim is dismissed in its entirety.
3. All other relief requests are denied.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee previously deposited by Claimant and shall retain the \$500.00 non-refundable filing fee previously deposited by Respondents and have assessed the following forum fees:

2 pre-hearing sessions x \$300.00	= \$600.00
5 hearing sessions x \$750.00	= \$3,750.00
Total outstanding	= \$4,350.00

Claimant Robert Bruce Harris be and hereby is liable for the sum of \$2,175.00 representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$350.00 with NASD Regulation, Inc.

Therefore, Claimant shall pay to NASD Regulation, Inc. \$1,825.00.

Respondents Cantella & Co., Inc. and George Rosen be and hereby are each jointly and severally liable for the sum of \$2,175.00 representing one-half of the total amount of forum fees assessed. Respondents previously deposited \$750.00 with NASD Regulation, Inc. Therefore Respondents shall pay to NASD Regulation, Inc. \$1425.00.

Fees are payable to the NASD Regulation, Inc.

Concurring Arbitrators' Signatures
Name

John J. O'Neill

Dean E. Kois
Dean E. Kois

Dominick J. Dorata, Esq.

I, Dean E. Kois, do hereby certify that this is my decision in the above-referenced matter.

Dean E. Kois
Dean E. Kois

NASD Date of Decision: March 18, 1997

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Dean E. Kois

Dominick J. Dorata
Dominick J. Dorata, Esq.

I, Dominick J. Dorata, Esq., do hereby certify that this is my decision in the above-referenced matter.

Dominick J. Dorata
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