

## N.A.S.D. AWARD

## NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration BetweenName of Claimant(s)

William J. Raike, III

95-04656

Name of Respondent(s)

First Colonial Securities, Inc.

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Securities Dealers, Inc.

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**REPRESENTATION**

For Claimant William J. Raike, III ("Claimant") appeared Terry R. Weiss, Esq., of the firm Long Aldridge & Norman, located in Atlanta, Georgia.

For Respondent First Colonial Securities, Inc. ("Respondent") appeared Donald Hoffman, Esq. of First Colonial Securities, Inc., located in Marlton, New Jersey.

**C A S S**

Statement of Claim filed: September 29, 1995.

Claimant's Reply to Supplemental Answer and Counterclaim filed on: May 22, 1996.

Claimant's Submission Agreement signed on: September 27, 1995.

Statement of Answer filed by Respondent on: November 7, 1995.

Supplemental Answer and Counterclaim filed by Respondent on: May 14, 1996.

Respondent's Submission Agreement signed on: November 3, 1995.

**HEARING INFORMATION**

Pre-Hearing Conference: June 11, 1996 - One Session

Hearing Dates/Sessions: June 28, 1996 Three Sessions

CASE SUMMARY

Claimant alleged that he became a registered representative with First Colonial Securities, Inc. ("First Colonial") in January 1994 and that he also served as the branch office manager of First Colonial's Atlanta, Georgia office. Claimant further alleged that his office was set up as an Office of Supervisory Jurisdiction ("OSJ"), with Claimant having primary supervisory responsibility over the other registered representatives in the office. Claimant contended that First Colonial was obligated to remit certain commissions to him for securities which had been sold by him and the other brokers in his office, and that once the net commissions were calculated, First Colonial would send a single commission check to Claimant, who would in turn pay the commissions to the individual brokers in the office.

Claimant asserted that First Colonial complied with its obligations from January 1994 until April 1995, at which time Claimant announced his intention to sever his relationship with First Colonial and to establish his own Broker-dealer firm. Claimant further asserted that he continued to transact securities trades through First Colonial through May 1995, while he was setting up his own firm, Raiké Financial Group, Inc. ("RF"). Claimant also asserted that during the months of May and June 1995, First Colonial failed to pay the commissions generated by the Atlanta office during the prior two months, and has failed to pay those commissions to this date.

Claimant contended that by retaining the commissions which were owed to him, First Colonial is liable to Claimant for breach of contract, conversion and/or unjust enrichment. Claimant further contended that despite First Colonial's refusal to pay the commissions to Claimant, he went ahead and paid the commissions owed to the individual brokers out of his own pocket.

In Claimant's reply to Supplemental Answer and Counterclaim of Respondent, Claimant maintained that First Colonial's defense to his Statement of Claim and its Counterclaim were both entirely based upon one customer arbitration claim, **William C. Cloninger v. First Colonial Securities, Inc.**, (the "Cloninger Arbitration"). He stated that the Cloninger case was brought by a customer of First Colonial, William Cloninger, who was not a customer of Raiké, and that they had never transacted business together. However, claimant further stated, William Cloninger was a customer of Gerald Summers ("Summers"), a First Colonial registered representative who was supervised by Raiké. Claimant further maintained that the Cloninger Arbitration was settled for **\$26,000.00** in March 1996.

Claimant also maintained that First Colonial's assertion that he was entirely responsible for the **\$25,000.00 insurance** deductible was misguided for several reasons. Claimant contended that he was named in the Cloninger arbitration solely in his capacity as a supervisor of Summers, and that there was never an **allegation** that Claimant had direct contact with Mr. Cloninger or directly participated in any of the alleged wrongdoing, and that there was no allegation that Claimant was acting as a registered representative with regard to Mr. Cloninger. Claimant further contended that First Colonial retained counsel in the case who **filed** an Answer on behalf of First Colonial, Summers and Raiké in which it stated that Raiké "acted at all times as a

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principal, and did not directly handle [Cloninger's] account. " Claimant also contended that First Colonial cannot legitimately claim the contrary. Claimant maintained that the Representative Agreement on which First Colonial relied did not require indemnification for the Cloninger case and that it only applies to Claimant in his capacity as a registered representative, not as a supervisor, therefore, since Claimant's conduct as a registered representative was not at issue in the Cloninger case, the Registered Representative Agreement does not create a basis for seeking indemnification against Claimant for the Cloninger claim.

Claimant further maintained that the Cloninger arbitration was settled prior to the hearing and therefore, there were no formal findings of liability against Claimant or any other respondent. Claimant also maintained that a mere settlement of a disputed claim does not constitute any sort of recognition or finding that Claimant actually breached any provision of the Registered Representative Agreement, therefore, even if the indemnification provision in the Agreement did apply, First Colonial could not succeed in establishing a breach of the Agreement without proving the facts of the underlying Cloninger case. Furthermore, Claimant maintained that he does not recall ever signing the Agreement and therefore, contests the authenticity of the Agreement and demands specific proof that it is in fact authentic. Claimant also contests the amount of commission withheld by First Colonial.

Respondent maintained that William J. **Raika** III ("Raika") joined Respondent in January, 1994 and that at that time, Raika's office was established as an OSJ **office**, with full responsibilities allocated to OSJ offices. Respondent further maintained that Raika had sole responsibilities for hiring and supervision of all his representatives and that he was advised that he and/or his brokers would be responsible in full for all complaints, arbitrations and ruling against his brokers or himself. Respondent also maintained that Raika was also advised at the time of hiring that if any broker under his supervision either left or was fired, he or his **office** commissions would be fully responsible for all losses incurred by anybody under that jurisdiction.

Respondent contended that on July 19, 1995, it received a customer complaint about one of Raika's brokers and had been notified of an arbitration hearing in which the client alleged unsuitability and churning with losses in excess of \$60,000.00. Respondent further contended that in April of 1995, Raika announced to Respondent that he was leaving the **firm**. Respondent also contended that its policy upon notification of an OSJ leaving the employment of First Colonial is to **retain** any deposits or commission earned in the last month to insure that all errors, unsecured debits, communication charges, along with any miscellaneous charges that have not been covered **are** satisfied by that office and that as a result, Respondent informed Raika that it would withhold all commissions due his office as a deposit pending **final** disposition of this arbitration.

In Respondent's Supplemental Answer and Counterclaim, Respondent **alleged** that the parties to this arbitration were co-respondents in the Cloninger Arbitration in which Cloninger asserted inter alia that Raika was a stock broker "employed" by First Colonial; that First Colonial had ultimate authority for supervising Raika

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and a registered representative known as Gerald Summers, both formerly employed by First Colonial in its Atlanta office, that Summers engaged in activities of **churning**, unsuitability, fraud and misrepresentation with respect to Cloninger's account; and that Raikes and First Colonial failed to supervise Summers. Respondent further alleged that the Cloninger Arbitration sought compensatory damages exceeding \$50,000.00, punitive damages, interest, attorney's fees and costs and that First Colonial's errors and omissions insurer defended against the Cloninger Arbitration. Respondent also alleged that it bore the first \$25,000.00 of defense costs and potential damages under the policy before insured losses became covered.

Respondent asserted that Raikes executed a "Registered Representative Agreement" ("Agreement") with Respondent on or about January 24, 1994 and that the Agreement provided in part that Raikes would strictly adhere to all rules, regulations and reporting requirements of the SEC, NASD and other securities regulatory organizations; and that Raikes would indemnify Respondent against losses, expenses, costs and damages incurred as a result of Raikes's (i) breach of agreement, (ii) violation of statutory or industry rules and regulations or (iii) intentional or fraudulent conduct. Respondent further asserted that prior to the Cloninger Arbitration hearing, it sought Raikes's participation in the settlement of that claim to no avail and that Respondent settled with Cloninger on March 5, 1996 for \$25,000.00, part of which included Raikes's final commissions.

#### **RELIEF REQUESTED**

##### **Claimant requested:**

1. **\$13,942.29 compensatory damages;**
2. **7 % interest on the commissions through the date of the award;**
3. **litigation expenses, including reasonable attorney's fees;**
4. **that the Arbitrator strike and disregard the Supplemental Answer and Counterclaim.**

##### **Respondent requested:**

1. **that an arbitration award be entered herein denying Raikes's claim, casting all fees assessable herein upon him;**
2. **that an arbitration award be entered in First Colonial's favor for not less than \$13,175 .00 plus interest and attorney's fees; and**
3. **that it recover such other relief as is just and proper.**

**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 Claims by Claimant in the Statement of Claim are dismissed;
2. Respondent's Counterclaim is dismissed;
3. Each party bears its their own respective costs;

**FORUM FEES**

Pursuant to Section 43c 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 and have assessed the following forum fees:

3 Sessions x \$300.00 = \$900.00

1 Pre-hearing Session x \$300.00 = \$300.00

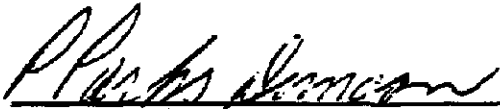
Claimant be and hereby liable for the sum of \$600.00 representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$300.00 with the NASD. Therefore, Claimant owes and shall pay to the NASD the sum of \$300.00.

Respondent be and hereby liable to the NASD in the sum of \$600.00 representing one-half of the total amount of forum fees assessed.

Fees are payable to the National Association of Securities Dealers, Inc.

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**ARBITRATORS'**



P. Parks Duncan  
Industry Chairperson

DATE OF DECISION: August 20, 1996