

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant and Counter-Respondent

The Chicago Corporation

and

95-04961

Name of Respondent and Counter-Claimant

Gary Hagstrom

REPRESENTATION OF PARTIES

For Claimant/Counter-Respondent: The Chicago Corporation ("TCC") was represented by Francis X. Grossi, Jr., Esq. of Bates Meckler Bulger & Tilson, located in Chicago, Illinois

For Respondent/Counter-Claimant: Gary Hagstrom ("Hagstrom") was represented by Peter J. Berman, Esq., located in Chicago, Illinois

CASE INFORMATION

TCC's Statement of Claim was filed on: October 20, 1995.

TCC's Amended Complaint was filed on: August 22, 1996.

TCC's Response to the Counterclaim was filed on: August 22, 1996.

TCC's Submission Agreement was signed by Perry L. Taylor, Jr., Executive Vice President of The Chicago Corp., on: October 30, 1995.

Hagstrom's Statement of Answer and Counterclaim was filed on: July 15, 1996.

Hagstrom's Submission Agreement was signed on: July 12, 1996.

HEARING INFORMATION

Pre-Hearing Conference: December 23, 1996 before One (1) arbitrator;
February 27, 1997 before One (1) arbitrator; and
April 3, 1997 before One (1) arbitrator.

Hearing Date and Sessions: April 7, 1997 for Two (2) sessions;

April 8, 1997 for Two (2) sessions; and
May 29, 1997 for Two (2) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

TCC brought this action to recover sums allegedly owed on two promissory notes and for overpayment of compensation to Hagstrom. As alleged in the Claim, Hagstrom was an employee of TCC from August 1, 1991 through March 7, 1995. In return for two checks totaling \$65,000 from TCC, Hagstrom signed a promissory note dated September 11, 1991 for \$50,000 and another dated March 16, 1992 for \$15,000. Numerous requests have been made to Hagstrom, but he has refused to pay back the money owed plus interest. Additionally, TCC asserted that Hagstrom's draw exceeded his generated commissions by \$10,263 for the period January 1, 1994 through March 23, 1995.

Hagstrom admitted signing the promissory notes and refusing to repay the notes as alleged by TCC. However, Hagstrom argued that TCC has failed to pay him bonuses he earned for the fiscal year ending March 31, 1995, and that the amount of said bonus exceeds the amounts owed under the promissory notes. Hagstrom asserted that he is entitled to set-off the amount of the bonus against the amount owed under the promissory notes. According to Hagstrom, TCC advised him that he would be compensated equally with all of the other senior managers of TCC's Equity Capital Markets Group ("ECMG"). Hagstrom maintained that he relied upon and expected to receive a salary and yearly bonus that was equal to the salaries and bonuses of other senior managers of the ECMG.

TCC's fiscal year ends on the thirty-first day of March. On March 7, 1995 Hagstrom advised TCC's chairman that he was planning to leave, but was willing to remain with TCC for several weeks. In addition, Hagstrom advised that he still expected a bonus equal to the bonuses that would be paid to the other managers of the ECMG for the fiscal year ending March 31, 1995. Hagstrom alleged that the chairman of ECMG advised him that his resignation could be effective immediately. Hagstrom left TCC that afternoon and TCC has failed to pay the bonus. Hagstrom alleged that he has a contractual right to receive the bonus and that TCC is estopped from denying his claim for the bonus on the basis of TCC's chairman's representations and his reliance upon them.

TCC denied the material allegations set forth in Hagstrom's counterclaim. TCC contended that Hagstrom was not a manager for the entire period he was employed with TCC. TCC specifically denied that Hagstrom was told that all managers of the ECMG would receive equal compensation, but did state that Respondent may have been informed that all managers would receive equal salaries without bonuses. TCC further argued that even if Hagstrom had been employed when bonuses are

customarily paid to senior employees, there would not have been a bonus pool because Respondent's department incurred a loss.

RELIEF REQUESTED

TCC requested an award for enforcement of both promissory notes against Hagstrom in the amount of \$65,000 principal on the notes; interest at the stated amount from the date of the notes until paid; repayment of the \$10,263 compensatory overpayment; costs and attorneys' fees incurred in this action.

Hagstrom requested an award for an amount equal to the bonuses TCC paid to other senior managers of TCC's Equity Capital Markets Group for the fiscal year ending March 31, 1995, less the amounts owed under the promissory notes.

OTHER ISSUES CONSIDERED & DECIDED

Prior to the hearing in this action, TCC moved for judgment on the promissory notes. The panel of arbitrators determined that the motion was denied and the issue considered as part of the final award.

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. 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. Respondent/Counter-Claimant Gary Hagstrom is liable for and shall pay to Claimant/Counter-Respondent The Chicago Corporation the sum of \$95,781.56;
2. Claimant-Counter-Respondent The Chicago Corporation is liable for and shall pay to Respondent/Counter-Claimant Gary Hagstrom the sum of \$12,040.66;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein;
4. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to § 10205(c) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed: Three (3) pre-hearing conferences x \$300.00 = \$900.00; Six (6) hearing sessions x \$600.00 = \$3,600.00; Total forum fees = \$4,500.00.

Pursuant to §10205(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$500.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$600.00 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant/Counter-Respondent The Chicago Corporation. In addition, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the \$400.00 adjournment fee overpayment as forum fees. The Chicago Corporation is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,250.00 as forum fees. Pursuant to §10205(c) of the NASD Code of Arbitration Procedure, Respondent/Counter-Claimant Gary Hagstrom is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the non-refundable filing fee in the amount of \$500.00. In addition, Respondent/Counter-Claimant Gary Hagstrom is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$2,250.00 as forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$300.00 previously deposited by Claimant, The Chicago Corporation.

NASD Regulation, Inc. Office of Dispute Resolution shall retain postponement fees in the amount of \$600.00 previously deposited by Claimant, The Chicago Corporation. In addition, the NASD Regulation, Inc. Office of Dispute Resolution shall retain postponement fees in the amount of \$600.00 previously deposited by Respondent, Gary Hagstrom.

Dated:

/s/ Kevin J. Conway, Esq.
Kevin J. Conway, Esq.
Industry Arbitrator, Presiding Chair

June 19, 1997

/s/ Herbert J. Paske
Herbert J. Paske
Industry Arbitrator

June 20, 1997

/s/ Steven Marc Malina, Esq.
Steven Marc Malina, Esq.
Industry Arbitrator

June 20, 1997