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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Prime Charter, Ltd.

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95-04963

Name of Respondent

Henry Zimmerman

SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 20, 1995, Claimant Prime Charter, Ltd. ("Prime"), through its representative and in-house counsel, Maureen A. Porete, Esq., alleged that Respondent Henry Zimmerman ("Respondent") breached his employment agreement and that Respondent failed to repay his debt to Prime upon termination of his employment. Claimant further alleged that concurrent with the commencement of his employment on January 3, 1994, Respondent signed an employment agreement whereby he agreed to be paid on a draw vs. commission system. Claimant contended that under this system, whenever Respondent received a draw check in excess of the amount generated in commissions, he accrued a deficit, which was recoverable against future earnings. Claimant further contended that upon Respondent's departure from Prime in March of 1995, his deficit was \$8,710.28, which he has failed to repay, and that as a result of the above, he should be held liable for Claimant's loss.

Respondent Henry Zimmerman, who appeared Pro Se, maintained that he was never informed by any representative of Claimant that he would be paid on the draw system. Respondent further maintained that during his employment negotiations with Prime's president, Mark Ronda, he was told that he would receive "\$3,000.00 a month salary, which would be removed after he was in production, had the time to establish his business, and felt comfortable with his commissions. Respondent contended that at no time was the word "draw" mentioned during discussions with Mr. Ronda or during his subsequent meeting with Mr. Schwartz of Prime. Respondent further contended that when he received his paycheck on March 15, 1995, and noticed that his \$3,000.00 salary was excluded, he met with Mr. Ronda who informed him that "he was not a bank and that it's time to go on my own." Respondent maintained that he told Ronda that he needed some notice so that he could budget himself for the future, but that Ronda refused, and a few hours later he was called back to his office and informed that his employment was terminated. Respondent further maintained that he was never informed that he would be paid on "draw," or that his performance was inadequate, and therefore, that he should not be held liable.

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RELIEF REQUESTED

Claimant Prime Charter LTD., requested \$8,710.28 in actual damages.

Respondent Henry Zimmerman, requested that the claims of the Claimant be dismissed in their entirety.

AWARD

Pursuant to Section 10 of the NASD, Inc. Code of Arbitration Procedure, a single Industry Arbitrator, Samuel P. Peluso, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Prime Charter LTD. on October 18, 1995, and by the Respondent Henry Zimmerman on February 13, 1996. And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimant Prime Charter LTD. against Respondent Henry Zimmerman are dismissed in their entirety.

2. The parties shall bear their respective costs.
3. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Prime Charter LTD. shall be retained by the NASD, Inc.

I, **SAMUEL P. PELUSO**, do hereby affirm, pursuant to Section 7507 of the New York Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my oath and award.

Signature of Arbitrator