

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

The Ohio Company, Inc.

Claimant,

v.

No. 96-00432

David P. Cavanagh

Respondent.

REPRESENTATION OF PARTIES

Claimant The Ohio Company, Inc. ("Claimant") was represented by Marion H. Little, Jr., Esq. of Zeiger & Carpenter located in Columbus, Ohio.

Respondent David P. Cavanagh ("Respondent") was represented by S. Thomas Wiener, Esq. of Feeney Kellett Wiener & Bush located in Bloomfield Hills, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about January 29, 1996. Claimant's Submission Agreement was signed on January 2, 1996 by James A. Francis, Senior Vice President and Corporate Counsel of The Ohio Company, Inc.

NASD Regulation, Inc. Office of Dispute Resolution has no record that Respondent filed a Statement of Answer or properly executed Submission Agreement.

HEARING INFORMATION

The hearing was held on December 2, 1996 for one (1) session. The hearing was held in Southfield, Michigan.

CASE SUMMARY

Claimant alleged that Respondent was employed as an account executive at The Ohio Company from on or about January 17, 1995 through on or about November 28, 1995. Claimant represented that, concurrently with Respondent's commencement of employment, Respondent entered into a loan agreement with Claimant. Claimant contended that, pursuant to the loan agreement, Claimant loaned Respondent \$60,000 and, in partial consideration, Respondent delivered a promissory note (the "Note") to The Ohio Company evidencing Respondent's obligation to repay said \$60,000. Claimant asserted that Section 3 of the Note provided, in part, for the acceleration of principal if Respondent voluntarily or involuntarily ceased to be an employee of The Ohio Company. Claimant maintained that Respondent's employment with The Ohio Company has been terminated, and the balance of \$60,000 is due and payable. Claimant alleged that Respondent has refused to pay the \$60,000 due.

NASD Regulation, Inc. Office of Dispute Resolution has no record that Respondent filed a Statement of Answer. At the Hearing, Respondent denied all liability to Claimant.

RELIEF REQUESTED

Claimant requested an award of: compensatory damages in the amount of \$60,000, plus pre-and post-judgement interest; its costs and attorney fees incurred; and for such other relief that the arbitrators may deem just and proper.

Respondent requested that the Statement of Claim be denied in its entirety with prejudice.

OTHER ISSUES CONSIDERED & DECIDED

Prior to the start of the hearing, Arbitrator James C. Bylenga advised NASD Regulation, Inc. Office of Dispute Resolution that he was involved in a traffic accident on his way to the hearing and would be unable to attend. The parties agreed to have this matter resolved with the two remaining arbitrators. Pursuant to 10313 of the NASD Code of Arbitration Procedure (the "Code"), the remaining arbitrators continued with the hearing and determination of the controversy.

Respondent David P. Cavanagh did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the Code and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent David P. Cavanagh is liable for, and shall pay to Claimant The Ohio Company, Inc. compensatory damages in the amount of Forty Five Thousand Dollars and No Cents (\$45,000.00);
2. That Respondent David P. Cavanagh is liable for, and shall pay to Claimant The Ohio Company, Inc. interest on the above sum at the rate of 6% from November 28, 1995 to December 2, 1996; and
3. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there was one (1) hearing sessions x \$600 = \$600 in forum fees. Pursuant to §10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500 and shall retain a portion of the hearing session deposit in the amount of \$300 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

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Pursuant to §10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$300 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Respondent David P. Cavanagh is liable for, and shall pay forum fees in the amount of \$300.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signature

\s\ Gerald A. Grossman, Esq.

Gerald A. Grossman, Esq.

Chairperson

Industry Arbitrator

December 24, 1996

Dated:

\s\ Terry W. Maynard

Terry W. Maynard

Panelist

Industry Arbitrator

December 21, 1996

Dated:

For NASD Regulation use only:

Date Award served on the parties: January 3, 1997