

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Robert J. Alldredge,

Claimant,

and

No. 96-00705

Norcross Securities, Inc.,

Respondent,

REPRESENTATION OF PARTIES

Claimant Robert J. Alldredge was represented by Robert J. Cruse, Esquire of Cruse, Firetag & Bock, P.C. located in Phoenix, Arizona.

Respondent Norcross Securities, Inc. was represented by Paul J. Roshka, Jr., Esquire of Roshka Heyman & Dewulf, PLC located in Phoenix, Arizona.

CASE INFORMATION

Claimant Robert J. Alldredge's Statement of Claim was filed on or about February 16, 1996. Claimant Robert J. Alldredge's Submission Agreement was signed on February 14, 1996.

Respondent Norcross Securities, Inc.'s Statement of Answer was filed on or about May 1, 1996. The NASD Regulation, Inc. Office of Dispute Resolution has no record of a submission agreement to arbitration from respondent Norcross Securities, Inc.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on: January 21, 1997 for two (2) sessions; and
 January 22, 1997 for one (1) session.

The hearing was held in Phoenix, Arizona.

CASE SUMMARY

Claimant Robert J. Alldredge ("Claimant") alleged that respondent Norcross Securities, Inc. ("Respondent") is liable for breach of contract, breach of A.R.S. § 23-350 *et seq.*, and unjust enrichment. Claimant asserted that on or about September 15, 1993 he entered into an employment agreement with Respondent, which provided that Claimant was to be paid 35% of the first \$500,000 of income he generated and 42½% of the next \$500,000 of income he generated. Claimant further asserted that on or about November 1993, while he was employed with Respondent, he introduced Electronic Associates, Inc. ("Electronic Associates"), a New York Stock Exchange company, to Broad Capital Associates, Inc. ("Broad Capital Associates") and that on or about the latter part of January or early February 1994, Electronic Associates and Broad Capital Associates entered into a transaction wherein Respondent received a warrant to purchase 50,000 shares of Electronic Associates stock at \$1.00 per share. According to Claimant, the warrants became effective January 7, 1994 and in the latter part of 1994 Respondent began to sell short the 50,000 shares of Electronic Associates at an average price of \$7.3561 for a profit of \$6.3561 per share for a total profit of \$317,805. Claimant argued that Respondent has failed and refused to pay the amounts due and owing him from the Electronic Associates and Broad Capital Associates transaction.

Respondent denied that it was liable to Claimant based on the allegations set forth in the Statement of Claim. Respondent stated that the shares of Electronic Associates that it sold short were not those shares underlying the warrants referred to by Claimant, but were shares borrowed from its clearing agent. Respondent further stated that no income was received as a result of Claimant's activity during the fiscal year ending November 30, 1994. Respondent alleged that the shares representing the warrants were registered over a year after Claimant was terminated, which was in February 1994, and that even if the employment agreement was applicable, it would not apply for the period after Claimant was no longer an employee of the firm. Respondent made the following affirmative defenses: (1) Claimant has failed to state a claim upon which relief can be granted; (2) at the time of Claimant's termination, no compensation was due him; (3) Respondent's policy is that when an employee is terminated for cause, he or she is not entitled to, and will not be paid, any further commissions or any other future compensation; (4) the NASD by-laws and the schedules thereto prohibit the payment of fees and commissions to non-licensed persons; (5) Claimant agreed to be bound by the NASD by-laws and rules and regulations when he executed his Form U-4; (6) Claimant's claim is barred by waiver; and (7) Claimant's claim is barred by failure of consideration.

RELIEF REQUESTED

Claimant Robert J. Alldredge requested. an award for compensatory damages in the amount of \$111,231.75; an award for treble damages pursuant to A.R.S. § 23-355 in the amount of \$333,695.25; an award for damages representing a reasonable value of the services conferred upon respondent Norcross Securities, Inc.; an award for costs incurred in the arbitration of this matter; and an award for reasonable attorney fees incurred in the arbitration of this matter pursuant to the employment agreement and/or A.R.S. § 12-341.01.

Respondent Norcross Securities, Inc. requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorney fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Norcross Securities, Inc. 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 NASD Code of Arbitration Procedure (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 Norcross Securities, Inc. is liable for and shall pay claimant Robert J. Alldredge for compensatory damages in the amount of \$111,231.75; and
2. 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 \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were three (3) hearing sessions x \$750 = \$2,250 in forum fees. Pursuant to §10332(b) of the NASD Code of Arbitration Procedure (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 §10205(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** as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by claimant Robert J. Alldredge.

Respondent Norcross Securities, Inc. is liable for and shall pay the member surcharge pursuant to §10333 of the Code in the amount of \$350

Respondent Norcross Securities, Inc. is liable for and shall pay forum fees in the amount of \$1,500 (= \$2,250 total forum fees - \$750 hearing session deposit by claimant Robert J. Alldredge).

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

Dated:

Peter Kay
Peter Kay
Industry Arbitrator, Presiding Chair

/s/

February 13, 1997

Maurice O. O'Neill
Maurice O. O'Neill
Industry Arbitrator

/s/

February 13, 1997

Thomas J. Cavanagh
Thomas J. Cavanagh
Industry Arbitrator

/s/

February 17, 1997