

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Richard F. Berry

96-01339

Name of Respondents

Royal Alliance Associates, Inc.
Morton J. Potoff

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 26, 1996, Claimant Richard F. Berry, ("Claimant"), who appeared Pro Se, alleged that Respondents Royal Alliance Associates, Inc. ("Royal Alliance"), and Morton J. Potoff ("Potoff") failed to pay him commission fees. Claimant further alleged that on August 16, 1994, his broker/dealer affiliation with Royal Alliance was terminated voluntarily and was transferred to Linsco/Private Ledger. Claimant contended that commissions for transactions which occurred after his termination date, during a thirty day period ending September 15, 1994, were paid to Royal Alliance and/or Potoff. Claimant further contended that other R.I.A. fees were also paid to Potoff by RTE, for business on the books prior to his termination date. Claimant asserted that the Account Executive Agreement stated that Royal "promises to pay me...any commissions then due me or which in the future may become due me on account of securities sold prior to my death, disability or termination, less any debit balance in my commission account". Claimant further asserted that because the Respondents have failed to pay him the owed commissions and fees on the above transactions, he has suffered losses for which the Respondents should be held liable.

Respondent Royal Alliance Associates, Inc., through its representative and in-house counsel Barbara McInerney, Esq., maintained in its Answer that in the Statement of Claim, the Claimant admitted that the transactions for which Claimant was not paid occurred after his voluntary termination from Royal Alliance. The Respondent further maintained that since all of the transactions in dispute occurred after Claimant severed his relationship with Royal Alliance, the Claimant was not entitled to any fees or commissions. Respondent contended that it had committed no wrongdoing and requested that the claims against it be dismissed.

Respondent Morton J. Potoff, who appeared Pro Se, maintained in his Answer that he was advised by several attorneys that Respondents were prohibited from granting Claimant commissions on transactions which occurred after Claimant severed his affiliation with Royal Alliance. Respondent further maintained that the operative paragraph in the Account Executive Agreement states that Royal Alliance only has a

responsibility to pay commissions for "securities sold prior to ...termination." Respondent alleged that the commissions in dispute arose from transactions which occurred after Claimant left Royal Alliance on August 16, 1994, and therefore Claimant is not entitled to any reimbursement. Respondent further alleged that Claimant had mis-calculated his fees due from RTE, and that since the disputed transactions were placed after Claimant's termination, Respondents were prohibited from compensating Claimant at all. Respondent maintained that he had committed no wrongdoing and requested that the claims against him be dismissed.

In a Reply to Respondents' Answers, Claimant asserted that all the commissions for which he seeks compensation were for business clearly sold before his termination date. Claimant refuted the defenses of the Respondents and amended his claim to include an additional \$156.49 due him.

RELIEF REQUESTED

Claimant Richard F. Berry, Jr. requested \$2,572.73 in actual damages.

Respondent Royal Alliance Associates, Inc. requested that the claims of the Claimant be dismissed.

Respondent Morton J. Potoff requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 10 of the NASD, Inc. Code of Arbitration Procedure, a single Industry Arbitrator, John D. Hughes, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Richard F. Berry, Jr. on March 23, 1996, and by the Respondent Royal Alliance Associates on April 25, 1996, and by the Respondent Morton J. Potoff on April 24, 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 Claimant Richard F. Berry, Jr. against Respondent Royal Alliance Associates, Inc. and Respondent Morton J. Potoff 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 Richard F. Berry shall be retained by the NASD, Inc.

AFFIRMATION

I, **JOHN D. HUGHES, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in cursive script, reading "John D. Hughes", is written over a horizontal line.

DATE OF DECISION:

July 16, 1996