

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Krikor Naccachian

96-01562

Name of Respondent

AmSouth Investment Services, Inc.

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In the Matter of the Arbitration Between

Name of Claimant

AmSouth Investment Services, Inc.

96-03623

Name of Respondent

Krikor Naccachian

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**REPRESENTATION**

For Krikor Naccachian ("Naccachian"), Claimant and Counterrespondent in Case Number 96-01562 and Respondent in Case Number 96-03623: Jonathan L. Alpert, Esq. and Patrick B. Calcutt, Esq. of Alpert, Barker & Calcutt, P.A., Tampa, Florida; and Nick Dodys, Esq. of Appel, Chitwood & Harley, Atlanta, Georgia.

For AmSouth Investment Services, Inc., ("AmSouth"), Respondent and Counterclaimant in Case Number 96-01562 and Claimant in Case Number 96-03623: Luther M. Dorr, Jr., Esq. and A. Inge Selden, III, Esq., of Maynard, Cooper & Gale, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Naccachian's Statement of Claim in Case No. 96-01562 was filed on April 11, 1996.  
Naccachian's Amendment to the Statement of Claim in Case No. 96-01562 was filed on May 30, 1997.  
Naccachian's Uniform Submission Agreement in Case No. 96-01562 was signed on April 10, 1996.  
Naccachian's reply to AmSouth's Counterclaim in Case No. 96-01562 was filed on July 1, 1996.

AmSouth's Statement of Answer and Counterclaim in Case No. 96-01562 was filed on June 17, 1996.  
AmSouth's Uniform Submission Agreement in Case No. 96-01562 was signed on June 25, 1996

AmSouth's Statement of Claim in Case No. 96-03623 was filed on August 22, 1996.  
AmSouth's Uniform Submission Agreement in Case No. 96-03623 was signed on August 21, 1996.  
Naccachian's Statement of Answer in Case No. 96-03623 was filed on October 11, 1996.

### HEARING INFORMATION

Pre-Hearing Conference: October 17, 1996/one session

Pre-Hearing Location: Via Telephone Conference Call

Pre-Hearing Conference: November 11, 1996/one session

Pre-Hearing Location: Nikko Hotel  
Atlanta, GA

Hearing Dates/Sessions: May 19, 1997/one session  
May 20, 1997/two sessions  
June 23, 1997/one session  
June 24, 1997/two sessions  
August 19, 1997/two sessions  
August 20, 1997/two sessions

Hearing Location: NASD Regulation District Office  
Atlanta, GA

### CASE SUMMARY

Naccachian's Statement of Claim alleged claims for defamation on the Uniform Termination Notice ("Form U-5") and form DRP-5 by AmSouth (Count 1); breach of express or implied employment contract or promise (Count 2); fraud (Count 3); intentional and outrageous conduct causing severe emotional distress (Count 4); violation of NASD By-Laws and Rules of Fair Practice (Count 5); and federal law violations (Count 6). On May 30, 1997, Mr. Naccachian amended Count 1 to allege post-filing defamation by AmSouth in various newspaper articles.

AmSouth, in its Statement of Answer and Counterclaim, denied Naccachian's allegations in the Statement of Claim and raised various defenses, including estoppel; privilege; at-will employment; absence of an express or implied employment contract; compliance with regulatory requirements; and that Naccachian had suffered no damages as a result of any alleged wrongdoing on the part of AmSouth. AmSouth simultaneously counterclaimed against Naccachian for breach of contract; conversion of trade secrets and confidential business information as well as breach of fiduciary duty. AmSouth demanded preliminary and permanent injunctive relief against Naccachian and an award of damages.

In his Answer to the Counterclaim, Naccachian denied the allegations therein, and raised the defenses of lack of legal authority for injunctive relief; no causation; unclean hands; lack of duty; and absence of legally protectable trade secrets.

AmSouth filed a separate arbitration claim against Naccachian for breach of contract; conversion of trade secrets and confidential business information and breach of fiduciary duty. AmSouth demanded preliminary and permanent injunctive relief against Naccachian and an award of damages. This case was assigned case number 96-03623 and consolidated with the case number 96-01562 earlier filed by Naccachian.

On August 21, 1996, AmSouth also filed a separate lawsuit against Naccachian in Circuit Court for Jefferson County, Alabama and obtained an ex parte temporary injunction against Naccachian. The injunction was dissolved on August 28, 1996, and the court case dismissed. That court case dealt with the same subject matter as AmSouth's counterclaim in case number 96-01562 and AmSouth's claim in case number 96-03623.

### **RELIEF REQUESTED**

Naccachian requested an award of compensatory damages; punitive damages; cost of this proceeding and correction of forms U-5 and DRP-5 filed by AmSouth pertaining to Naccachian's discharge, and the dismissal of all claims raised by AmSouth.

AmSouth requested preliminary and permanent injunctive relief and compensatory damages against Naccachian and the dismissal of all claims raised by Naccachian.

### **OTHER ISSUES CONSIDERED & DECIDED**

Upon consideration of the Motion to Consolidate, the panel granted the Motion To Consolidate which the NASD Regulation confirmed to the parties on September 18, 1996.

The parties have agreed that the Award in this consolidated 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 the NASD.

The Panel confirmed Order dated November 24, 1996 which denied AmSouth's petition for an interim injunction against Naccachian and granted Naccachian's motion to dismiss AmSouth's petition for an interim injunction such Order attached to this award and shall become part of this award (Attachment A).

The Panel granted AmSouth's motion to dismiss count 2 (claim for breach of express or implied employment contract or promise) and count 6 (federal law violations) of Naccachian's Statement of Claim, as well as Count 3 (fraud) and Count 5 (Violation of NASD Bylaws and Rules of Fair Practice).

The parties have agreed that and it was ordered that the transcript of Premier Court Reporters shall be the official record of the proceedings and that the parties shall share equally (50% Naccachian/50% AmSouth) the appearance fee of the reporter and the cost of providing transcript copies to the Panel and transcribing the original. The parties also have agreed to send the original transcript to the NASD Regulation at the conclusion of the proceeding.

**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 the claims raised by Naccachian in case no. 96-01562 are denied, *and granted in part as further stated herein.* (Clarification added)
2. That the claims raised by AmSouth in the counterclaim in case no. 96-01562 and in the statement of claim in case no. 96-03623 are denied.
3. That the NASD Regulation Central Registration Depository ("CRD") shall revise its description of the 1995 NASD letter of Acceptance, Waiver and Consent, which appears in response to question 22F (2) on Krikor Naccachian's Uniform Application For Securities Industry Registration or Transfer (form U-4), the Disclosure Reporting Page should read as follows:
  - #1 22F (2):
  - #2 Yes
  - #3 Initiated by NASD Regulation
  - #4 Arbitration
  - #5 Date Initiated: April 1995
  - #6 Docket/Case #: C 05950055
  - #7 Allegations: Failure of firm to conduct annual compliance meeting for some registered individuals.
  - #8
    - a Current Status: Closed. Letter of Acceptance, Waiver and Consent agreed to by firm and certain individuals.
    - b Status Date: August 29, 1995
    - c Results: AWC with Mr. Naccachian's \$5,000 fine paid by the firm.
  - #9 Summary:
  - #10 Attachments: Not applicable.
4. That, if necessary or required by Krikor Naccachian's current or future employers, Naccachian's form U-4 and disclosure reporting page shall be amended in substantial conformity with the above language. The Panel finds that the above language is an accurate description of the event and that previous reports of the event on forms U-4 and U-5 and disclosure reporting pages, and on the NASD's Central Registration Depository, may not have been completely accurate.
5. That CRD is directed to expunge all other references to the 1995 NASD letter of Acceptance, Waiver and Consent (Occurrence 2) pertaining to Naccachian individually, including references to this incident on any forms U-5 filed by AmSouth Investment Services, Inc., during the calendar year 1996.

6. That AmSouth is directed and ordered to file a revised and corrected form U-5 for Krikor Naccachian with the following answers:

- # 11 Date Terminated: February 7, 1996
- # 12 Reason for Termination: Discharged -- change in firm management.
- # 13 A. Yes  
B. No  
C. No
- # 14 No
- # 15 No
- # 16 A. AmSouth shall check the box which states that there is no additional information to be reported at this time.

The form U-5 so filed shall be signed by an authorized representative of AmSouth Investment Services, Inc.

- 7. That AmSouth is liable to and shall refund directly to Naccachian the \$1,000.00 hearing session deposit previously submitted to NASD Regulation in case no. 96-01652.
- 8. That AmSouth is liable to and shall refund directly to Naccachian the \$500.00 filing fee previously submitted to the NASD Regulation in case no. 96-01652.
- 9. That each party shall bear its own costs and expenses, including attorney's fees, except as specifically addressed in this award and in the forum fees section below.
- 10. That any and all relief not specifically addressed herein is denied.

#### OTHER COSTS

Pursuant to Rule 10333 of the NASD Regulation Code of Arbitration Procedure ("Code") AmSouth Investment Services, Inc. is assessed a member surcharge of \$500.00 in case no. 96-01562 and \$350.00 in case no. 96-03623. AmSouth shall receive credit for the member surcharge deposits of \$850.00 previously submitted to the NASD Regulation, leaving no further member surcharge due.

Pursuant to Rule 10205(h) AmSouth Investment Services, Inc. is assessed a non-refundable injunctive relief surcharge of \$2,500.00, which surcharge was deposited previously with NASD Regulation, leaving no further injunctive relief surcharge due.

**FORUM FEES**

Pursuant to Rule 10205(c) of the Code, the following Forum Fees are assessed:

2 Prehearing Sessions x	\$ 300.00 =	\$ 600.00
10 Hearing Sessions x	\$1,000.00 =	<u>\$10,000.00</u>
<b>Total Forum Fees</b>		<b>\$10,600.00</b>

Forum Fees are assessed to AmSouth Investment Services, Inc. AmSouth Investment Services, Inc. shall receive credit for the \$1,000.00 hearing session deposit submitted by, and ordered to be reimbursed to, Naccachian as well as hearing session deposits of \$1700.00 submitted by AmSouth Investment Services, Inc. in case no. 96-01562 and \$1575.00 in case no. 96-03623, leaving a net assessment due from AmSouth Investment Services, Inc. of \$6,325.00.

NASD Regulation shall refund to Krikor Naccachian the additional funds deposited in case no. 96-03623 of \$600.00.

Fees are payable to the National Association of Securities Dealers Regulation, Inc.

**DATE**

**CONCURRING ARBITRATORS' SIGNATURES ON  
CLARIFICATION OF ITEM NO. 1 IN AWARD SECTION**

11/12/97



Robert N. Leitch, Presiding  
Public Arbitrator

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Stuart Meyers  
Public Arbitrator

\_\_\_\_\_  
Comer L. Hawkins  
Industry Arbitrator

Date Decision Clarified Award Served by NASD Regulation:

November 17, 1997

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