

## **AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.**

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**In the Matter of the Arbitration Between**

**Name of Claimant**

**Geoffrey Hendrick**

**and**

**Case Number 96-01725**

**Name of Respondent**

**Scottsdale Securities, Incorporated**

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### **REPRESENTATION OF PARTIES**

**Claimant Geoffrey Hendrick was represented by Bill Abney, Jr., Esq. of Abney & Reed located in Oklahoma City, OK.**

**Respondent Scottsdale Securities, Inc. was represented by Lisa M. Wood, Esq. of Armstrong, Teasdale, Schlafly & Davis located in St. Louis, MO.**

### **CASE INFORMATION**

**The Statement of Claim was filed on or about April 22, 1996.**

**The Submission Agreement of Claimant Geoffrey Hendrick was signed on April 15, 1996.**

**The Statement of Answer and Motion to Dismiss was filed by Respondent Scottsdale Securities, Inc. on or about June 24, 1996.**

**The Submission Agreement of Respondent Scottsdale Securities, Inc. was signed on May 20, 1996 by Rodger O. Riney, President.**

**Claimant's Reply to the Motion to Dismiss was filed on or about August 22, 1996.**

**Respondent's Response to the Claimant's Reply to the Motion to Dismiss was filed on or about September 9, 1996.**

**Claimant's Supplemental Reply to the Motion to Dismiss was filed on or about September 30, 1996.**

### **HEARING INFORMATION**

A pre-hearing conference was held on October 21, 1996 by telephone conference call for one (1) hearing session before three arbitrators.

### **CASE SUMMARY**

In the Statement of Claim, Claimant Geoffrey Hendrick ("Claimant") contended that he was dismissed unjustly by Respondent Scottsdale Securities ("Respondent"). On or about April 2, 1995, Claimant began employment as an assistant broker to Joe Spillman ("Spillman") managing broker, in Respondent's two-person satellite office in Oklahoma. As alleged, Spillman used profanity with Claimant on three occasions and Spillman said that Claimant reacted by threatening Spillman with physical violence by blocking a doorway. Claimant asserted: that in the early morning of August 1, 1995, he asked Spillman for assistance in obtaining group hospitalization insurance; that Spillman's refusal to cooperate led to a quarrel; that Claimant and Spillman discussed and disagreed on many issues including the personnel policy manual, grievance procedures, Claimant's job performance, Spillman's job performance as well as employee benefits. Claimant allegedly told Spillman this discussion amounted to violence which could be met with violence. Claimant further asserted: that the argument resumed on the same day after the market closed; that Claimant denied threatening Spillman with violence while claiming to say they would not have any violence; that Spillman understood they would comply with the complaint procedures in the personnel manual; and that Claimant did not block exit through the doorway but did hesitate near the door to request a written apology. Claimant alleged that although he received a good evaluation from Respondent after three months of employment and the customers of Scottsdale liked him, he may have been fired due to the friction between himself and Spillman stemming from inequitable distribution in bonuses. Claimant contended that he wanted the job because the office was fast becoming a gold mine and was able to support excellent salaries for the manager and assistant. However, Claimant contended that since Spillman was unwilling to split the office profits, Spillman fired Claimant in an immoral way. Despite appeal of the termination to Rodger Riney, President of Scottsdale, Claimant's Uniform Termination Notice stated that he was discharged for a personality conflict with his supervisor.

In the Statement of Answer and Motion to Dismiss, Respondent Scottsdale Securities, Inc. claimed that the Statement of Claim was barred by the employment at-will doctrine which provided that an employer may discharge for cause or without cause an at-will employee while not being subject to liability for wrongful discharge. Respondent asserted that immediate dismissal of the Statement of Claim was warranted since no constitutional, statutory or decisional law existed which would have required Respondent from discharging Claimant and since Respondent acted solely within the laws of the State of Oklahoma. Respondent maintained that the termination of Claimant on August 3, 1995 was justified and that Claimant was terminated for a personally conflict with his supervisor, the reason set forth upon the Form U-5. According to the Respondent, Claimant's work performance had deteriorated markedly in the three weeks prior to termination by his voicing numerous

complaints about compensation and by expressing an interest in soliciting Scottsdale customers for an outside accounting business. Finally, Respondent claimed that on August 2, 1995, Claimant was argumentative belligerent and threatening in his tone and demeanor and, despite warning, such behavior continued. Respondent asserted affirmative defenses including, but not limited to, failure to state a claim upon which relief may be granted; Claimant had not been damaged by any alleged act or omission of Respondent but any damages were the direct and proximate result of Claimant's own actions; and Claimant's claims for punitive damages are beyond the scope of arbitration and violate the United State Constitution as well as the Oklahoma Constitution.

Claimant replied to the request for dismissal by alleging that a person cannot fire another when such termination would interfere with established state or national policy. Claimant requested that the motion for dismissal be denied in its entirety.

#### **RELIEF REQUESTED**

Claimant Geoffrey Hendrick requested an award for punitive damages in the amount of \$5,000.00 as well as reinstatement as an assistant broker in the Oklahoma City office of Scottsdale Securities, Inc. at the same rate of pay as at the time of dismissal or if reinstatement is not granted, an award in the amount of \$12,800.00 for impaired earnings.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its' costs and attorneys' fees.

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

After reviewing Respondent Scottsdale Securities, Inc.'s motion to dismiss and all related submissions, the arbitrators decided they would hear oral arguments on the motion pursuant to Sections 10303 and 10305 of the NASD Code of Arbitration Procedure. The arbitrators heard the oral arguments during the pre-hearing conference on October 21, 1996. After the pre-hearing conference and following careful consideration of the issues and submissions, the arbitrators determined in accordance with Sections 10305 and 10324 of the Code that the motion was granted.

On November 15, 1996, Claimant Geoffrey Hendrick filed a motion seeking a refund of the \$500.00 hearing session deposit and the \$600.00 hearing session deposit. After reviewing and considering the motion as well as the Respondent Scottsdale Securities, Inc.'s response, the arbitrators determined in accordance with Section 10205 of the Code of Arbitration Procedure that the motion was denied.

#### **AWARD**

After considering the pleadings and the oral arguments of the parties presented during the hearing session and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) The Statement of Claim is hereby dismissed with prejudice in its entirety;
- (2) The parties shall bear their own costs including attorneys' fees except for those fees specifically enumerated herein; and
- (3) All relief not specifically granted herein is hereby denied in its entirety.

#### **FORUM FEES**

Forum fees are calculated at the rate of \$600.00 per hearing session. There was one (1) hearing session  $\times$  \$600.00 = \$600.00 in forum fees. Pursuant to Section 10332(b) of the 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 Section 10332(c) of the Code, the National Association of Securities Dealers Regulation, Inc. ("NASD Regulation, Inc.") shall retain the non-refundable filing fee in the amount of \$500.00 and shall retain as forum fees the hearing session deposit in the amount of \$600.00 previously deposited with the NASD Regulation, Inc. by Claimant Geoffrey Hendrick.

The NASD Regulation, Inc. shall also retain the \$200.00 member surcharge previously paid by Respondent Scottsdale Securities, Inc. in accordance with Section 10333 of the Code.

Signed:

Dated:

Michael R. Prescott, Esq.  
Michael R. Prescott, Esq.  
Industry Arbitrator, Presiding Chair

December 4, 1996

Ira W. Panton  
Ira W. Panton  
Industry Arbitrator

December 11, 1996

William M. Lacy  
William M. Lacy  
Industry Arbitrator

December 10, 1996

Date served by the NASD Regulation, Inc.: December 12, 1996

After considering the pleadings and the oral arguments of the parties presented during the hearing session and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) The Statement of Claim is hereby dismissed with prejudice in its entirety,
- (2) The parties shall bear their own costs including attorneys' fees except for those fees specifically enumerated herein; and
- (3) All relief not specifically granted herein is hereby denied in its entirety.

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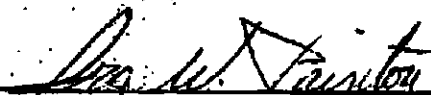
Signed:

Dated:



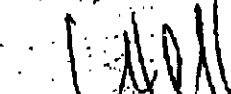
Dec 4, 1996

Michael R. Prescott, Esq.  
Industry Arbitrator, Presiding Chair



Dec 11, 1996

Ira W. Paimon  
Industry Arbitrator



12-10-96

William M. Lacy  
Industry Arbitrator