

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Name of Claimant

Dennis G. Kruse

and

96-01916

Name of Respondent

RAF Financial Corporation

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### **REPRESENTATION OF PARTIES**

Dennis G. Kruse ("Claimant") was represented by Philip E. Pankoff, Esq., Denver, Colorado.

RAF Financial Corporation ("Respondent") was represented by Russell C. Burk, Esq., RAF Financial Corporation, Denver, Colorado.

### **CASE INFORMATION**

The Statement of Claim was filed on or about May 6, 1996. Submission Agreement of Claimant Dennis G. Kruse was signed on April 30, 1996.

Statement of Answer was filed by Respondent RAF Financial Corporation on or about June 14, 1996. Submission Agreement of Respondent RAF Financial Corporation was signed on June 13, 1996 by Russell Burk.

### **HEARING INFORMATION**

The hearing was held on Tuesday, December 3, 1996 for two (2) sessions and Wednesday, December 4, 1996 for two (2) sessions in Denver, Colorado for a total of four (4) sessions.

### **CASE SUMMARY**

Claimant alleged that he was employed at Respondent RAF Financial Corporation as the primary sales broker for the Jackson County, Missouri multi-family housing bond issue ("Jackson County bonds"). It was alleged that in connection with his employment:

- Claimant was in frequent contact with representatives of Allstate soliciting the sale of the Jackson County bonds to Allstate.

- That in December, 1994 representatives of Allstate requested information that Claimant was unable to provide. Claimant contacted Paul Abernathy of Respondent's underwriting department to provide the information.
- That in March, 1995, Allstate purchased Jackson County bonds "at the net".
- That Respondent did not pay Claimant the commission due him as a result of the Allstate purchase of the Jackson County bonds "at the net".

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that Claimant acted as an introducing broker with respect to the transaction in question. It was further stated that Claimant was paid a commission which was based in part on its standard division of commissions on issues underwritten by its Public Finance Department, and fairly reflects Claimant's contribution to the sale of the bonds. The following affirmative defenses were asserted by Respondent:

- Claimant has failed to state a claim against Respondent upon which relief may be granted;
- Claimant has failed to mitigate his damages, if any;
- Claimant's claims are barred by the doctrine of waiver;
- Claimant's claims are barred by the doctrine of estoppel; and
- Claimant would be unjustly enriched by any award he might receive in this matter.

#### **RELIEF REQUESTED**

Claimant requested that the arbitration panel order the Respondent to pay him \$122,975; filing fees; attorneys' fees and penalties pursuant to Colorado Revised Statutes 8-4-104(3). In the alternative, Claimant requested that the arbitration panel make an independent determination of the fair and equitable commission due him under the theories of equity and quantum merit; filing fees; attorneys' fees and penalties pursuant to Colorado Revised Statutes 8-4-104(3).

Respondent requested that the claims asserted against it be dismissed and that it be awarded its' costs and attorneys' fees associated with defending this matter.

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

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 the NASD.

#### **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:

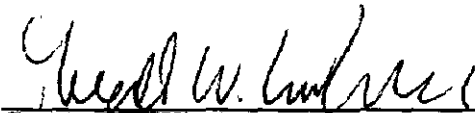
1. The claims asserted in this matter shall be and hereby are dismissed in their entirety. The panel in dismissing the claims asserted in this matter feels that RAF Financial Corporation should take steps to improve and more clearly define its' policies regarding allocation of commissions, particularly when representatives of different departments are involved in the sale of securities.
2. Each party shall bear its own costs, expenses and fees, including attorneys' fees incurred in this matter not specifically enumerated herein.

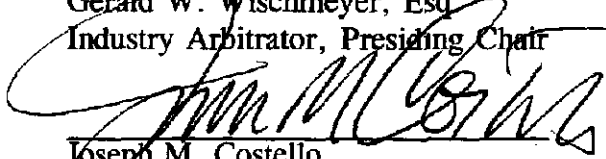
### FORUM FEES


Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were four (4) sessions x \$750 = \$3,000 in forum fees. Pursuant to §10205(b) 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 NASD Code of Arbitration Procedure, 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 the Claimant Dennis G. Kruse. Claimant Dennis G. Kruse shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of **\$750**. Respondent RAF Financial Corporation shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of **\$1,500** as the balance due for forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350. **Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

  
Gerald W. Wischmeyer, Esq.  
Industry Arbitrator, Presiding Chair

  
Joseph M. Costello  
Industry Arbitrator

  
Albert T.T. Cook, Jr.  
Industry Arbitrator

Dated:

12-4-96

12/4/96

12-4-96