

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Craig I. Hughes

96-02029

Name of Respondents

Sanford C. Bernstein & Co. Inc.

REPRESENTATION

For Claimant, Craig I. Hughes ("Claimant"), appeared Daniel E. Katz, Esq. of the law firm of Pressman & Associates located in New York, New York.

For Respondent, Sanford C. Bernstein & Co., Inc., ("Respondent"), appeared Carole O'Blenes, Esq. of the law firm Proskauer Rose Goetz & Mendelsohn LLP located in New York, New York.

CASE INFORMATION

Statement of Claim filed: May 10, 1996.

Claimant's Submission Agreement signed on: May 7, 1996.

Respondent's Statement of Answer and Counterclaim filed on: July 26, 1997.

Respondent's Submission Agreement signed on: July 23, 1996.

HEARING INFORMATION

Hearing Dates/Sessions:	February 6, 1996	-	Two Sessions
	February 7, 1996	-	Two Sessions
	March 3, 1996	-	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that, on July 26, 1993, he was hired by respondent as manager of its Private Client Business Planning ("PCBP"). Claimant further alleged that his duties included evaluating new business opportunities for PCBP such as IRA rollovers, 401(k) sales and the establishment of a trust company.

Claimant also alleged that, upon commencement of his employment, respondent agreed to pay him an annual salary of \$100,000.00 plus an annual bonus equal to 50% of his salary. Claimant asserted that he received an outstanding performance review from the respondent and at the end of 1993 was paid a bonus of \$21,236.00 representing 50% of his annual salary prorated to reflect his five months of service. Claimant further asserted that his performance was so exceptional that, in July 1994, respondent raised his annual salary to \$150,000.00.

Claimant also asserted that, in the Fall of 1994, respondent asked him to establish a new business plan to attract 401(k) plan assets and the respondent approved said plan in October 1994. Claimant contended that, in December of 1994, he received an outstanding oral performance review and was paid an annual bonus for 1994 of \$65,000.00 representing 50% of his annual 1994 salary. Claimant further contended that, during the aforementioned performance review, respondent's representatives stated he would receive a bonus for the upcoming year of 1995 of at least fifty percent of his annual salary of \$150,000.00. Claimant alleged that, in December 1994, he was asked by respondent to assume full administrative responsibility for the 401(k) business plan. Claimant further alleged that this position significantly increased his responsibilities and that he was highly praised for his performance. Claimant also alleged that, in the Spring of 1995, his duties were expanded to include management of the Investment Planning Group ("IPG"), which required him to supervise the work of analysts in Respondent's offices nationwide. Claimant asserted that he received positive feedback from respondent's representative for his management of the IPG. Claimant further asserted that, in July 1995, he launched the 401(k) program and was again praised for his work.

Claimant contended that, in September of 1995, he was informed that the respondent was going to eliminate the 401(k) business and thereby eliminate his position with the firm. Claimant further contended that respondent represented that this was in no way related to his job performance but was due solely to economic reasons. Claimant also contended that, to provide respondent with a smooth transition, he agreed to remain employed with the firm through November 1995 and respondent agreed to pay claimant the firm's standard severance package of two months annual salary commencing in December 1995. Claimant further contended that he competently performed his duties from September 1995 until his termination date, November 30, 1995. Claimant also contended that respondent refused to pay his 1995 bonus which amounted to 50% of eleven months worth of his \$150,000.00 salary of the pro-rated over eleven months. Claimant alleged that respondent's actions constituted breach of contract, fraud and that he is entitled to a quantum meruit recovery.

Respondent maintained that it is a privately owned firm engaged in investment research and management. Respondent also maintained that it hired claimant in July of 1993 at an annual salary of \$100,000.00. Respondent contended that Kevin Brine, a Senior Vice President, explained to claimant that the Board of Directors frequently awarded year-end bonuses but they were not guaranteed and were based on such factors as profitability and the employee's individual contributions. Respondent further contended that Brine told the claimant that it would be difficult to evaluate his individual contributions for 1993 so therefore, absent unexpected events, he anticipated recommending claimant for a pro-rated year-end bonus. Respondent also contended that claimant knew that individual managers did not have the authority to guarantee a year-end bonus without approval of the Board of Directors. Respondent asserted that claimant had acknowledged in writing that he had reviewed the respondent's employee handbook which stated that bonuses were discretionary and that there was no guarantee that a bonus would be paid in a given year or to any particular employee. Respondent further asserted that year-end bonuses were customarily distributed in mid-January for the calendar year just ended and that, according to the employee handbook, to receive a bonus the employee must be employed on the date on which the bonuses were distributed.

Respondent also asserted that, in July 1994, claimant received a \$50,000.00 raise and was told his salary would remain at that level for at least eighteen months. Respondent maintained that, in the fall of 1994, Brine recommended to the Board of Directors that the claimant receive a 1994 year-end bonus of

\$65,000.00 and that the bonus was paid on January 13, 1995. Respondent further maintained that, in December 1994, claimant was informed that it was unclear how long his position would be viable and that he should look to move to a different and more senior position in sales or management. Respondent also maintained that claimant alienated important business contacts by being abrasive and difficult to work with. Respondent contended that claimant was given responsibility for overseeing respondent's IPA but he did not perform as expected and he did not develop the requisite technical background for the work. Respondent further contended that management decided to eliminate claimant's position and determined that it would not be appropriate to place him in any other position at the firm. Claimant also contended that on September 11, 1995, Brine met with the claimant and told him that his position was being eliminated and immediately relieved him of virtually all of his responsibilities and told him to devote his time to conducting a job search. Respondent maintained that Brine told claimant that he could remain on the payroll until November 30, 1995 and use the facilities to conduct his job search. Respondent further maintained that Brine offered claimant a lump sum severance payment equivalent to two months salary.

Respondent also maintained that, from September 11, through November 30, 1995, Claimant did virtually no work for the respondent and spent his time looking for a job. Respondent contended that at no time between September 11, 1995 and March 12, 1996 did claimant raise the issue of his year-end bonus. Respondent further contended that claimant knowingly misled respondent into providing him with a separation package that would not have been offered had respondent been made aware of the bonus dispute.

In its Counterclaim, respondent alleged that claimant's assertion of the claims set forth in the Statement of Claim is "frivolous conduct" within the meaning of New York's Uniform Trial Court Rules because it is completely without merit in law or fact and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law. Respondent further maintained that claimant is therefore liable for respondents expenses and reasonable attorney fees.

RELIEF REQUESTED

Claimant requested: Damages in the amount of \$68,750.00 plus interest, statutory liquidated damages in the sum of \$17,187.50, ordinary costs, statutory costs in the sum of \$50.00, attorney fees, disbursements and filing fees.

Respondent requested: claimant's claim be dismissed, reasonable attorneys' fees, costs, forum fees and disbursements, and such other and further relief as is deemed just and proper.

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 panel, by majority ruling, with arbitrator Bernice Ellis dissenting, be and hereby denies all claims against respondent.
2. Respondent's counterclaim be and hereby is dismissed.
3. Each party shall bear its respective costs, including attorneys' fees.
4. All other relief requests be and hereby are denied.

FORUM FEES

Pursuant to Rule 10205 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee previously deposited by the claimant and shall retain the \$600.00 non-refundable filing fee previously deposited by the respondent and have assessed the following forum fees:

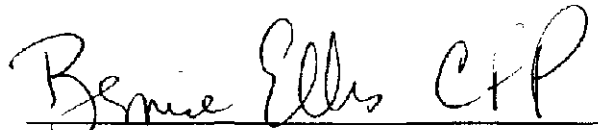
6 hearing sessions x \$750.00 = \$4,500.00

Claimant, Craig I. Hughes, be and hereby is liable for the sum of \$2,250.00 representing one-half of the forum fees assessed. Claimant previously deposited \$750.00 with NASD Regulation, Inc. Therefore, Claimant shall pay to NASD Regulation \$1,500.00.

Respondent, Sanford C. Bernstein & Co. Inc., be and hereby is liable for the sum of \$2,250.00 representing one-half of the forum fees assessed. Respondent previously deposited \$500 with NASD Regulation, Inc. Therefore, Respondent shall pay to NASD Regulation \$1,750.00

Fees are payable to NASD Regulation, Inc.

DISSENTING ARBITRATORS SIGNATURE

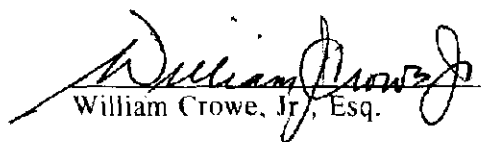

Bernice Ellis, CFP

I, **Bernice Ellis, CFP**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

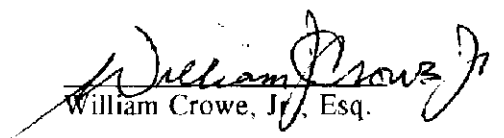

Bernice Ellis, CFP

DATE OF DECISION: APRIL 8, 1997

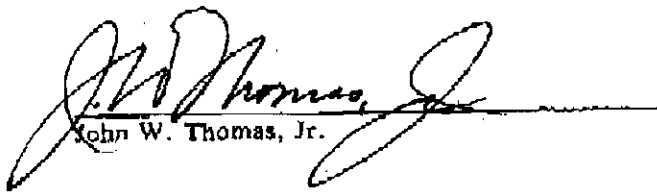
CONCURRING ARBITRATORS' SIGNATURES


William Crowe, Jr., Esq.

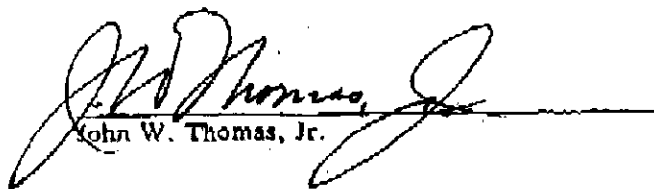
I, **William Crowe, Jr., Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.


William Crowe, Jr., Esq.

DATE OF DECISION: APRIL 8, 1997


John W. Thomas, Jr.

I, John W. Thomas, Jr., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.


John W. Thomas, Jr.

DATE OF DECISION: APRIL 8, 1997