

NASD REGULATION, INC. AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

L.T. Lawrence & Co., Inc.

96-02523

Name of Respondent

Michael Iacono

**REPRESENTATION**

For Claimant L.T. Lawrence & Co., Inc. ("LTL") Michael F. Bachner, Esq. located in New York City, NY.

For Respondent Michael Iacono ("Iacono") Andrew L. Jaloza, Esq. located in New York City, NY (appeared with Respondent at the 2nd hearing session) and Respondent Iacono appeared pro se at the 1st and 3rd hearing session.

**CASE INFORMATION**

Statement of Claim was filed on June 7, 1996.

Claimant's Submission Agreement was signed on June 7, 1996.

Statement of Answer was filed by Respondent Michael Iacono on March 13, 1997.

Respondent Michael Iacono failed to file a properly executed Submission Agreement pursuant to Rule 10314 of the Code of Arbitration Procedure.

**HEARING INFORMATION**

Hearing Dates/Sessions:	February 18, 1997	-	One Session
	April 2, 1997	-	One Session
	April 8, 1997	-	One Session
	June 9, 1997	-	One Session

The hearing was held at the NASD Regulation, Inc. offices located in New York City, NY.

**CASE SUMMARY**

Claimant alleged that on April 10, 1995, LTL hired Iacono as a registered sales representative. Claimant also alleged that the terms and conditions of Iacono's employment were delineated in an employment agreement (the "agreement") signed by both parties. As set forth in the agreement, Iacono was to receive compensation according to a commission schedule specifying a pay-out rate of forty, fifty, or fifty-five

percent of gross commissions based upon the monthly gross commission income he generated. Additionally, the agreement provided for a fixed pay-out rate of sixty percent of gross commission income for the first four months of Iacono's employment. Further, the agreement provided that Iacono have the option to choose any of his first twelve months of employment on a "look back" basis, and have his compensation for that month increased to eighty percent of gross commission income. Claimant alleged that, as established in the agreement, if the employment relationship ended prior to April 9, 1996, Iacono would immediately pay to LTL the difference between the commissions he received and the commissions he would have received based on the pay-out rates determined by the commission schedule alone. In addition, claimant asserted that the agreement also provided that Iacono pay immediately on demand any expenses incurred while enforcing compliance with the terms of the agreement, including attorney's fees and filing fees.

Claimant maintained that, on February 27, 1996, Iacono resigned from LTL. Claimant alleged that, pursuant to the terms of the agreement, Iacono immediately became responsible for the difference in commissions received and commissions he would have received in accordance with the schedule. Claimant further alleged that Iacono's continued failure to comply with the terms of the agreement made him responsible for the cost of ensuing attempts at enforcement.

Respondent alleged that LTL instructed their sales representatives to act in violation of their legal and ethical responsibilities to their clients. Iacono contended that he refused to follow these alleged unlawful instructions and brought his concerns to the attention of LTL management. Respondent alleged that management met his concerns with an invitation to quit if he did not like LTL's instructions, or be fired if he did not comply. Respondent alleges that LTL's conduct constituted a bad faith breach of the agreement such that Claimant was not entitled to recover damages pursuant to the terms therein. Respondent also maintained that claimant's wrongful conduct bars its recovery under the doctrine of unclean hands, lack of good faith and estoppel.

#### **RELIEF REQUESTED**

Claimant requested compensation in the sum of \$18,068.30 for commissions refundable from the first four months of employment and \$31,768.75 in commissions refundable in accordance with the "look back" provision of the employment agreement. Claimants also requested \$1,500 in attorney's fees and \$1,400 for the NASD filing fee.

Respondent requested that all claims against him be dismissed.

#### **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. Respondent Iacono be and hereby is liable and shall pay to Claimant LTL the sum of \$49,837.05 in compensatory damages.
2. Each party shall bear their respective costs, including attorneys' fees.

**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 claimant and have assessed the following forum fees:

4 sessions X \$600	= \$2400.00
minus hearing session deposit	- \$ 600.00
Total outstanding	= \$1800.00

Respondent Iacono be and hereby is liable and shall pay the sum of \$1800.00 representing 100% of the forum fees outstanding. Therefore Respondent Iacono is liable and shall pay to NASD Regulation, Inc. the sum of \$1800. Respondent Iacono is additionally liable and shall pay to NASD Regulation, Inc. the sum of \$600.00 as a postponement fee for the hearing session scheduled for April 9, 1997. Therefore, respondent Iacono owes a total of \$2400.00 to NASD Regulation, Inc.

Fees are payable to the NASD Regulation, Inc.

**ARBITRATOR'S SIGNATURE**

I, Robert L. Salzburg, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law & Rules that this is my decision in the above-captioned matter.

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Robert L. Salzburg, Esq.  
Industry Chairperson

I, Judith C. Zerden, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law & Rules that this is my decision in the above-captioned matter.

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Judith C. Zerden, Esq.  
Industry Arbitrator

I, R. Keith Butterfield, do hereby affirm pursuant to Article 7507 of the Civil Practice Law & Rules that this is my decision in the above-captioned matter.

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R. Keith Butterfield  
Industry Arbitrator

**ARBITRATOR'S SIGNATURE**

I, Robert L. Salzburg, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law & Rules that this is my decision in the above-captioned matter.



Robert L. Salzburg, Esq.  
Industry Chairperson

I, Judith C. Zerden, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law & Rules that this is my decision in the above-captioned matter.

Judith C. Zerden, Esq.  
Industry Arbitrator

I, R. Keith Butterfield, do hereby affirm pursuant to Article 7507 of the Civil Practice Law & Rules that this is my decision in the above-captioned matter.

R. Keith Butterfield  
Industry Arbitrator

DATE OF DECISION: July 22, 1997

**ARBITRATOR'S SIGNATURE**

I, Robert L. Salzburg, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law & Rules that this is my decision in the above-captioned matter.

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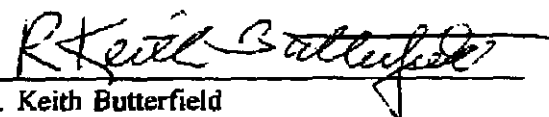
Robert L. Salzburg, Esq.  
Industry Chairperson

I, Judith C. Zerden, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law & Rules that this is my decision in the above-captioned matter.

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Judith C. Zerden, Esq.  
Industry Arbitrator

I, R. Keith Butterfield, do hereby affirm pursuant to Article 7507 of the Civil Practice Law & Rules that this is my decision in the above-captioned matter.



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R. Keith Butterfield  
Industry Arbitrator

DATE OF DECISION : July 22, 1997