

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Michael Delaney

96-02845

Name of Respondent

Rodman & Renshaw, Inc.

REPRESENTATION

For Claimant: Michael Delaney ("Delaney") was represented by Gregory A. Friedman, Esq. of Friedman & Holtz, P.C., located in Chicago, Illinois.

For Respondent: Rodman & Renshaw, Inc. ("Rodman") was represented by Michael J. Gaertner, Esq. of Lord, Bissell & Brook, located in Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: July 3, 1996.

Claimant's Submission Agreement signed on: July 2, 1996.

Amended Statement of Claim and Response to Affirmative Defenses filed on: October 11, 1996.

Statement of Answer filed by Respondent on: September 6, 1996.

Respondent's Submission Agreement signed on: September 6, 1996 by Robert Bade, Senior Vice President, Managing Director of Compliance, Rodman & Renshaw, Inc.

Answer to Amended Statement of Claim filed on: November 20, 1996.

HEARING INFORMATION

Pre-Hearing Conference: Administrative Conference pursuant to Section 10334 of the Code of Arbitration Procedure held November 25, 1996.

Hearing Dates/Sessions: May 12, 1997 for Two (2) sessions; and
May 13, 1997 for Three (3) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant Delaney alleged that Respondent Rodman breached the terms of an employment agreement dated January 3, 1995. In addition, Delaney alleged that Rodman terminated his employment without cause and withheld the full amount of the monthly payments due Delaney in retaliation for his filing the original

statement of claim. Delaney further alleged that Rodman failed to pay him funds due for the work which resulted in Rodman being included in the selling group of an offering of Convertible Subordinated Notes. Based upon the allegations, Delaney asserted claims for breach of contract; retaliatory discharge; and unjust enrichment.

Rodman denied the material allegations Delaney's claims, asserting that the facts and circumstances the parties relied on when the employment agreement was executed changed shortly after he was hired because of the purchase of the investment banking and institutional equity business from another brokerage firm. This purchase would result in a dramatic increase in the size and structure of Delaney's department, and substantially escalate Delaney's income. Rodman alleged that the parties realized that this would distort Delaney's compensation and that agreement was reached to modify Delaney's agreement to attain a level of income as contemplated when the January 3, 1995 employment agreement was executed. A modified agreement was reviewed by Delaney, who assured Rodman that he would sign the new agreement. However, Delaney instead filed this action and was subsequently fired because his refusal to sign undermined his relationship with other employees and adversely affected his job performance. In addition, Rodman asserted several defenses, including the following:

1. Delaney should be estopped from asserting the original contract provisions because Rodman relied on his representation that he would modify in going forward with the acquisition;
2. The January 3, 1995 agreement should be reformed because the parties were operating under a mutual mistake of fact;
3. Delaney has breached the duty of good faith and fair dealing implied in the original employment agreement; and
4. The doctrine of unjust enrichment precludes Delaney from unjustly enriching himself at Rodman's expense.

RELIEF REQUESTED

Claimant requested entry of an award of compensatory damages in excess of \$2,000,000; an amount equal to the sum Rodman earned in connection with the offering plus interest; filing fees and such other relief as the panel deems proper.

Respondent requested that the Arbitrators deny Delaney's claims and grant Rodman such other relief as was just and proper.

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 originals 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. Respondent Rodman & Renshaw, Inc. is liable for and shall pay to Claimant Michael Delaney the sum of \$1,519,638.00 (One Million, Five Hundred Nineteen Thousand, Six Hundred Thirty Eight Dollars);
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically awarded is hereby denied.

OTHER COSTS

Respondent Rodman & Renshaw, Inc. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the member surcharge of \$500.00 pursuant to Section 10333 of the Code of Arbitration Procedure.

FORUM FEES

Pursuant to Section 10205(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Five (5) hearing sessions x \$1,000.00 per session = \$5,000.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$500.00 non-refundable claim filing fee and refund the \$1,000.00 hearing sessions deposit previously deposited by the Claimant, Michael Delaney. Respondent Rodman & Renshaw, Inc. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$5,000.00 as forum fees.

Concurring Arbitrators' Signatures

Name

Date

/s/ James E. Green, Esq.
James E. Green, Esq.
Industry Arbitrator
Chairperson

June 16, 1997

/s/ Thomas J. Cavanagh
Thomas J. Cavanagh
Industry Arbitrator

June 16, 1997

/s/ Jay K. Buck
Jay K. Buck
Industry Arbitrator

June 17, 1997