

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

J.W. Charles Securities, Inc.

NASD CASE NO. 96-02878

Name of Respondent

Donald Michlin

REPRESENTATION

For Claimant: Gregory Tendrich, Esq., Assistant General Counsel of J.W. Charles Securities, Inc.

For Respondent: L. Van Stillman, Esq., Law Offices of L. Van Stillman, Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed on July 8, 1996.

Claimant's Submission Agreement signed on July 1, 1996 by Gregory Tendrich, Esq, Assistant General Counsel of J.W. Charles Securities, Inc.

Answer to Statement of Claim filed by Respondent on January 2, 1997.

Respondent's Submission Agreement signed on September 12, 1997.

HEARING INFORMATION

On December 13, 1996, a telephonic pre-hearing conference lasting one (1) session was conducted with the arbitration panel. On September 11, 1997, in Fort Lauderdale, Florida, hearings lasting two (2) sessions were conducted.

CASE SUMMARY

The Claimant asserted that Respondent is indebted to it in the sum of \$101,485.42 based on the Respondent's breach of his employment agreements with Claimant. Claimant alleged that those agreements, the Addendum to Standard Agreement and the Standard Agreement, provide that the Respondent would reimburse the Claimant for customer losses and return all "payouts" received in the event Respondent terminated his employment with the Claimant within three years of his hire. Claimant further alleged that the payouts included a \$40,000.00 forgivable draw, \$80,000.00 of non-forgivable draws and \$11,001.09 above normal grid pay.

Respondent, a former account executive with Claimant, denied that he owes any monies to the Claimant. Respondent alleged that he was constructively terminated from his position, and therefore is not obligated to Claimant. Respondent additionally alleged that the forgivable draw were monies he is not obligated to repay, regardless of the Panel's findings as to his alleged constructive termination. Respondent further asserted that it was the Claimant's actions which resulted in a customer error loss and as such, said loss should not have been attributed to his account.

RELIEF REQUESTED

Claimant requested that the arbitrators award it compensatory damages in the sum of \$101,485.42 together with pre-judgment and post-judgment interest, attorneys' fees, reimbursement of the NASD filing fee and member surcharge, and all other costs associated with this proceeding.

Respondent requested that the Panel dismiss all claims against him, and award him attorneys' fees, costs and such other and further relief as is deemed 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 NASD Regulation, Inc.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post-hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is found liable, and shall pay to Claimant the amount of \$99,144.00, together with post-judgment interest at the rate of 5% per annum which shall begin to accrue thirty (30) days from Respondent's receipt of this award.
2. All other claims for relief, including Claimant's request for pre-judgment interest and the parties' requests for attorneys' fees, are denied.

OTHER COSTS

Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,250.00 (2 sessions X \$750.00 per session, plus one pre-hearing conference with the Panel X \$750.00) as follows:

1. Claimant is hereby assessed the amount of \$1,125.00 for which NASD Regulation, Inc. shall retain the \$750.00 previously deposited by Claimant in partial satisfaction thereof, leaving a balance due in the sum of \$375.00.
2. Respondent is hereby assessed the amount of \$1,125.00.

3. NASD Regulation, Inc. shall retain the \$500.00 claim filing fee and the \$350.00 member surcharge previously paid by Claimant.

Fees are payable to National Association of Securities Dealers Regulation, Inc.

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/
Richard N. Ragland, Esq.
Chairperson

Industry

/s/
Gary B. Weiss

Industry

/s/
Alvin Shulklapper

Public

Date of Decision: November 10, 1997