

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Andrew Garrett, Inc., ("Claimant") vs. Thomas Song and Lawrence Topper, ("Respondents")

Case Number: 96-03088

Hearing Site: New York, NY

REPRESENTATION OF PARTIES

Claimant Andrew Garrett, Inc., hereinafter referred to as "Claimant": John E. Lawlor, Esq., Mineola, NY.

Respondent Thomas Song ("Song") appeared *pro se*.

Respondent Lawrence Topper ("Topper") appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: July 8, 1996.

Amended Statement of Claim filed on or about: October 23, 1996.

Claimant signed the Uniform Submission Agreement: July 16, 1996.

Statement of Answer to Claimant's Amended Statement of Claim filed by Respondents on or about: June 16, 1997.

Song signed the Uniform Submission Agreement: June 18, 1997.

Topper signed the Uniform Submission Agreement: June 18, 1997.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; conversion of trade secrets, customer lists and confidential business information; breach fiduciary duty and duties of loyalty; and, unfair competition.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant failed to state a claim upon which relief may be granted; Claimant's claims are barred by the statute of limitations; Respondents acted in good faith; Respondents had no knowledge of, or reasonable grounds to believe in the existence of facts which allegedly gave rise to the other Respondent's liability; Respondents did not cause Claimant's losses; the doctrine of unclean hands; and, the doctrines of estoppel, waiver, and laches.

RELIEF REQUESTED

Claimants requested:

- (1) judgment in its favor and against Respondents for actual and consequential damages in an amount to be determined, but which is incalculable at this time; and
- (2) compensatory damages against Song in the amount of \$3,913.81 and an additional award of attorneys' fees in the amount of \$978.00;
- (3) compensatory damages against Topper in the amount of \$9,762.99 and an additional award of attorneys' fees in the amount of \$2,440.75;
- (4) an award of costs, attorneys' fees and such other award that is just and proper.

Respondents requested an award dismissing the Statement of Claim in its entirety together with cost and disbursements, including attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

In the original Statement of Claim, Claimant named Walsh, Manning Securities, Inc. as a Respondent in this matter. By letter dated October 23, 1996, Claimant withdrew, without prejudice, all claims against Walsh, Manning Securities, Inc.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims against Song are hereby denied in their entirety.
2. Topper be and hereby is liable for and shall pay to Claimant the sum of \$8,363.00 as compensatory damages.
3. Claimant's requests for interest and attorneys' fees are hereby denied.
4. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 500.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. In this matter, Andrew Garrett, Inc is a party.

Member surcharge = \$ 200.00

Adjournment Fees

Adjournments requested during these proceedings:

April 24 and 25, 1997, adjournment by Claimant
Claimant and Respondents agreed to split the
cost of this postponement fee.

= \$ 600.00

August 26 and 27, 1997, adjournment by Song
The entire fee for this postponement has
been assessed against Song.

= \$1,000.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Hearing sessions x \$600.00 = \$1,200.00

Hearing Date: March 7, 2000 2 sessions

Total Forum Fees = \$1,200.00

1. The Panel has assessed \$900.00 of the forum fees against Claimant.
2. The Panel has assessed \$300.00 of the forum fees against Topper.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 200.00
Adjournment Fee	= \$ 300.00
Forum Fees	= \$ 900.00
Total Fees	= \$1,900.00
<u>Less payments</u>	= \$1,100.00
Balance Due NASD Regulation, Inc.	= \$ 800.00

2. Song be and hereby is solely liable for:

Adjournment Fee	= \$1,000.00
Total Fees	= \$1,000.00
<u>Less payments</u>	= \$ 600.00
Balance Due NASD Regulation, Inc.	= \$ 400.00

3. Topper be and hereby is liable for:

Forum Fee	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Regulation, Inc.	= \$ 300.00

4. Topper and Song be and hereby are jointly and severally liable for:

Adjournment Fee	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Regulation, Inc.	= \$ 300.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7307 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

William J. Crowe, Jr., Esq.
Industry Arbitrator, Presiding Chair

Charles L. Walker
Charles L. Walker
Industry Arbitrator

Gimson A. Yee
Industry Arbitrator

Signature Date

4/10/00
Signature Date

Signature Date

April 11, 2000
Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

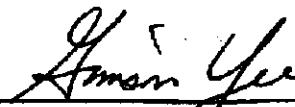
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

William J. Crowe, Jr., Esq.
Industry Arbitrator, Presiding Chair

Signature Date

Charles L. Walker
Industry Arbitrator

Signature Date




Gimson A. Yee
Industry Arbitrator

Signature Date

April 11, 2000
Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, 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 J. Crowe, Jr., Esq.
Industry Arbitrator, Presiding Chair

April 17, 2000
Signature Date

Charles L. Walker
Industry Arbitrator

Signature Date

Charles L. Walker
Industry Arbitrator

Gimson A. Yee
Industry Arbitrator

Signature Date

Gimson A. Yee

April 11, 2000
Date of Service (For NASE office use only)