

NASD Arbitration & Mediation

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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John G. Kinnard and Company, Inc.

96-03119

Name of Respondent

Mark A. Spaugy

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers Regulation, Inc. on July 22, 1996, claimant John G. Kinnard and Company, Inc., ("claimant") through its representative and in-house counsel, F. Chet Taylor, Esq., alleged that respondent Mark A. Spaugy ("respondent") was employed as a representative in its Denver office, from November 29, 1994 to January 15, 1996. Claimant further alleged that respondent received an advance of \$14,000.00 pursuant to the terms and conditions of a Promissory Note and Confession which became due and payable upon termination. Claimant averred that respondent's monthly payments from January 1, 1995 to January 1, 1996 were forgiven, but contended that he is liable for the unforgivable balance of \$8,944.46 which became due according to the Promissory Note and Confession, when he resigned. Claimant contended that respondent has not complied with his contractual obligations which also included payment of interest and attorneys fees.

Respondent Mark A. Spaugy, who appeared Pro Se, maintained that claimant's claim is without merit since it misrepresented the type of operation which was run through its Denver office. Claimant further maintained that it was difficult to perform in that environment and had to leave as the situation became unbearable. Respondent contended that, (a) he was continually harassed by respondent's Compliance Officer, Barry Seale; (b) that his customer's sell order was not executed, resulting in a customer complaint being filed against him; (c) that claimant's traders routinely traded ahead of customers' orders in violation of NASD Code 2110-2; (d) that claimant did not honor their signed employment agreement regarding State Regulations; and (e) that respondent violated Section 6 of the Code of Arbitration Procedure by filing the Confession of Judgment in court, during the arbitration of this claim.

RELIEF REQUESTED

Claimant John G. Kinnard and Company, Inc., requested a reduced award of \$10,000.00, calculated as follows: Principal balance on the Note of \$8,944.46, \$271.95 in interest at the rate of six percent per annum from January 15, 1996 to the date of the Statement of Claim, attorney fees of \$1,000.00, plus costs.

Respondent Mark A. Spaugy requested that he not be held liable for claimant's claim.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant John G. Kinnard and Company, Inc., filed motions which requested leave to file a response to respondent's Answer, if the issues in the Answer was considered by the Arbitrator, or in the alternative, requested the scheduling of an evidentiary hearing. The Arbitrator denied the motion pursuant to Section 10302(h)(1) of the NASD Code of Arbitration Procedure, the Arbitrator denied the motion. The Arbitrator considered respondent Mark A. Spaugy's Statement of Answer.

AWARD

Pursuant to Section 10203 of the NASD, Inc. Code of Arbitration Procedure, a single Industry Arbitrator, Cletus E. Byrne, Jr., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimant John G. Kinnard and Company, Inc., on July 18, 1996 and by respondent Mark A. Spaugy on September 9, 1996.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Mark A. Spaugy is liable and shall pay to claimant John G. Kinnard and Company, Inc., \$8,944.46 in actual damages.
2. Respondent Mark A. Spaugy is liable and shall pay to claimant John G. Kinnard and Company, Inc., \$271.95 which represents interest at the rate of 6% per annum from January 15, 1996 to July 18, 1996.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.
5. All other relief requests are denied.

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AFFIRMATION

I, CLETUS E. BYRNE, JR., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in cursive script, appearing to read "Cletus E. Byrne, Jr.", is written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: January 17, 1997