

N.A.S.D. AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant/Counter-Respondent

Michael G. Sammon

96-03235

Name of Respondents/Counter-Claimants

Pierce & Company L.P.;  
Wayne L. Pierce;  
Pierce Financial Inc.; and  
Pierce Capital, Inc.

REPRESENTATION

For Claimant/Counter-Respondent: Michael G. Sammon ("Sammon") appeared pro se.

For Respondents/Counter-Claimants: Pierce & Company, L.P. ("Company") and Wayne L. Pierce ("Pierce") were represented by William C. Glynn, Esq. of the Law Offices of William C. Glynn, located in Chicago, Illinois. Pierce Financial Inc. and Pierce Capital, Inc. did not submit to arbitration.

CASE INFORMATION

Statement of Claim filed on: July 29, 1997.

Sammon's Submission Agreement signed on: July 24, 1996.

Statement of Answer and Counterclaim filed by Respondents Company and Pierce on: September 20, 1996.

Respondent Company's Submission Agreement signed on: September 20, 1996 by Wayne L. Pierce, President of Pierce Capital Inc., General Partner of Pierce & Company, L.P.

Respondent Pierce's Submission Agreement signed on: September 20, 1996.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: May 22, 1997 for One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Sammon alleged that Respondents failed to pay him the commissions due him for transactions he either directly placed or had direct responsibility for, in spite of the oral representations made by respondents

at the time of his hiring.

Respondents denied the material allegations of the statement of claim, stating that no set rate was reached to cover all transactions, but that each transaction was evaluated separately. In addition, in several transactions specifically mentioned in the Claim, Sammon was not the primary person responsible for the transaction. Respondents asserted a counterclaim against Sammon, alleging attempted diversion of company funds, intentional interference with contractual relations and disparagement.

#### **RELIEF REQUESTED**

Sammon requested entry of an award for the commissions due in the sum of \$88,323.00.

Respondents/Counter-Claimants Company and Pierce requested a decision in their favor, that the action be dismissed with prejudice, and that they receive cost and fees for defending this action. In addition, Respondents/Counter-Claimants requested damages in their counterclaim for cost of employees time to remedy the actions allegedly taken by Sammon; costs of the response; attorneys' fees and such other relief as the arbitrators deemed just.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Sammon named as Respondents Pierce Financial, Inc. and Pierce Capital, Inc. Both entities are non-members of the National Association of Securities Dealers, Inc. and refused to submit to arbitration. Therefore, they were not parties to this arbitration and the arbitrators made no decision regarding their liability.

At hearing, Claimant amended his relief request to include that Item 15 of the Form U-5 submitted by Respondents upon termination of his employment be expunged from his CRD record.

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 and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Pierce & Company, L.P. and Wayne L. Pierce shall pay to Claimant Michael G. Sammon the sum of \$2,252.09 in exchange for Check #1601 in the same sum which was previously provided to Claimant;
2. The Central Registration Depository ("CRD") of the National Association of Securities Dealers, Inc. shall expunge from the record of Claimant Michael G. Sammon any indication that Item 15 of the Form U-5 filed by Respondent Pierce & Company, L.P.

upon Sammon's termination was answered "yes", as well as any explanation concerning the termination;

3. All remaining claims or relief requested by Claimant Sammon are hereby dismissed and denied;

4. The counterclaims brought by Pierce & Company, L.P. and Wayne L. Pierce are hereby dismissed and denied;

5. The parties shall bear their own costs of arbitration, including any attorneys' fees; and

6. Any relief not specifically awarded is hereby denied.

**OTHER COSTS**

Respondent Pierce & Company, L.P. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the \$300.00 member surcharge required under 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:  
One (1) session x \$600.00 per session = \$600.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$500.00 claim filing fee and, as forum fees, \$300.00 of the \$600.00 hearing session deposit previously deposited by the Claimant. The NASD Regulation, Inc., Office of Dispute Resolution shall refund the remaining \$300.00 to Claimant Michael G. Sammon. Respondents Pierce & Company, L.P. and Wayne L. Pierce shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$300.00 as forum fees.

Concurring Arbitrators' Signatures  
Name

Date

/s/ Brian E. Slotky  
Brian E. Slotky  
Industry Arbitrator  
Chairperson

July 22, 1997

/s/ Marc B. Horin  
Marc B. Horin  
Industry Arbitrator

July 17, 1997

/s/ Richard E. Moore  
Richard E. Moore  
Industry Arbitrator

July 17, 1997