

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

Rickel & Associates, Inc.

96-03350

Name of Respondent

Peter Foley

REPRESENTATION

For claimant Rickel & Associates ("claimant") appeared Peter Seiden, Esq. of the law firm of Schneck, Weltman, Hashmall & Mischel LLP, located in New York, New York.

Respondent Peter Foley ("respondent") appeared pro se.

CASE INFORMATION

Statement of Claim was filed on August 5, 1996. Claimant's Submission Agreement was signed on August 1, 1996.

Statement of Answer was filed on September 17, 1996. Respondent's Submission Agreement was signed on September 17, 1996.

HEARING INFORMATION

Hearing Sessions/Dates: February 7, 1997 - One Session

The hearing was held at the offices of the National Association of Securities Dealers located in New York, New York.

CASE SUMMARY

Claimant alleged that, on or about June 5, 1995, respondent commenced his employment with Rickel as Director of Recruiting. Claimant further alleged that, pursuant to its written agreement with respondent, it made advance payments to respondent totalling more than \$17,375.27 which respondent agreed to reimburse during the course of his employment. Claimant contended that, respondent terminated his employment and to date, had failed and refused to reimburse Rickel for the indebtedness.

Respondent maintained that his employment agreement with claimant provided that he was to receive a salary, which was to be offset by the commissions he earned as a producing broker. Respondent further maintained that the agreement did not state that, if he left the firm before the end of the contract, he would be required to pay back the salary he had received. Respondent contended that claimant had already offset his commissions with the salary he received and that he not owe anything to claimant.

RELIEF REQUESTED

Claimant requested damages in an amount to be determined upon the presentation of proof at the arbitration hearing, believed to be in excess of \$17,375.27. Claimant further requested all costs and expenses including, but not limited to, fees for preparation, trial and appeals and other legal proceedings in an amount to be determined at the arbitration hearing in this matter.

Respondent did not specifically request relief.

AWARD

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

1. All claims against respondent be and hereby are dismissed in their entirety.
2. Each party shall bear their own costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrator has determined that the NASD shall retain the \$500.00 non-refundable filing fee and the \$300.00 hearing session deposit previously paid by claimant as full consideration for the hearing conducted in this matter.

Arbitrator's Signature

Philip M. Mandel

Philip M. Mandel, Esq.
Industry Arbitrator

Date of decision: February 26, 1997

I, Philip M. Mandel, Esq., 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.

Philip M. Mandel

Philip M. Mandel, Esq.