

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

LatInvest Securities Inc.

96-03604

Name of Respondent

William Harten

REPRESENTATIONS

For Claimant LatInvest Securities Inc. ("Claimant") appeared Keith McDermott in-house-counsel located in New York.

For Respondent William Harten ("Respondent") appeared Douglas Preston, Esq., located in Hicksville, New York.

CASE INFORMATION

Statement of Claim filed: August 21, 1996.

Claimant's Submission Agreement signed on: August 20, 1996.

Respondent did not file a Statement of Answer.

Respondent did not file a Submission Agreement as required by Rule 10314(b) of the Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Date/Sessions: April 17, 1997 Two Sessions

The hearing was conducted at the offices of NASD Regulation located at 125 Broad Street New York, New York.

CASE SUMMARY

Claimant alleged that, in October of 1994, respondent requested and was granted a salary advance of

\$15,000.00 with the understanding that the advance would be repaid. Claimant further alleged that the respondent resigned later that month and when asked to reimburse the firm for the amount, respondent refused claiming entitlement to the funds as a bonus for 1994. Claimant also alleged that company policy required employees to remain until the end of the calendar year to be eligible for a bonus.

By way of counterclaim, respondent maintained that, while employed at InverMexico, he was the firm's Controller when the Chief Financial Officer left the firm, respondent became the Acting Chief Financial Officer. Respondent further maintained that management at InverMexico informed him that he was a candidate for the position of CFO, though he was never interviewed. Prior to his termination, respondent was informed he was not being considered for that position, and was constructively discharged from his positions of Controller and Acting Chief Financial Officer. Respondent also maintained that, at the time of his termination, respondent was due four days pay and four vacation days that remain unpaid. Respondent contended that claimant wrongly failed to advise him that health insurance was available to employees of the firm. Respondent further contended that the \$15,000.00 he received was a salary advance and that in the past employees of the claimant had received special bonuses before the end of the year. Respondent also contended that after he tendered his resignation, his supervisor Juan Carlos Rodriguez, told him the bonus did not have to be repaid.

RELIEF REQUESTED

Claimant requested the sum of \$15,000.00 plus any legal and arbitration costs.

Respondent requested: claimant's claim be dismissed; that he be granted damages to restore his 1994 pay to what it would have been had he been permitted to assume the position of Chief Financial Officer; eight days pay based on an annual salary of \$60,799.00; and punitive damages, court costs, and attorneys fees.

OTHER ISSUES CONSIDERED AND DECIDED

The parties agreed on the record that claimant would provide respondent with a letter exonerating respondent from further attempts to collect this sum other than the enforcement of this decision.

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. The sum of \$15,000 is awarded to the claimant.
2. Eight days back pay, based on a yearly income of \$60,799.00 is awarded to the respondent.
3. All requests for punitive damages are denied.
4. All other requests for relief are denied.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 filing fee previously deposited by the claimant, and have assessed the following Forum Fees:

2 sessions x \$300 = \$600.00

Claimant, LatInvest Securities Inc. is and is hereby liable and shall pay to NASD Regulation Inc. \$300.00 representing one-half of the total amount of forum fees assessed. LatInvest previously deposited \$300.00 therefore it owes nothing by way of Forum Fees.

Respondent, William Harten is and is hereby liable for \$300.00 representing one-half of the forum fees assessed. Therefore, respondent William Harten shall pay to NASD Regulation, Inc. the sum of \$300.00.

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

I, Theodore Kimelman, 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.

Name

Theodore Kimelman

Public/Industry

Theodore Kimelman, Esq.

Date of Decision: July 1, 1997