

NASD REGULATION, INC. AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Dean Witter Reynolds Inc.

96-03711

Name of Respondent

William Michael Hayden

REPRESENTATION

For Claimant Dean Witter Reynolds, Inc. ("DWR") appeared Meredith W. Holler, Esq., of the law firm Moore & Van Allan, PLLC, located in Charlotte, NC.

Respondent William Michael Hayden ("Hayden") appeared pro se.

CASE INFORMATION

Statement of Claim filed: August 27, 1996.

Claimant's Submission Agreement signed on: September 6, 1996.

Two letters from claimant dated June 23, 1997.

Respondent Hayden's Statement of Answer filed on: March 21, 1997.

Respondent Hayden's Submission Agreement Signed on: March 21, 1997.

HEARING INFORMATION

Hearing Date/Sessions: June 19, 1997 - Two Sessions

The hearings were held at the Sheraton Hotel, located in Charlotte, North Carolina.

CASE SUMMARY

Claimant, DWR alleged that Hayden was employed as an account executive from March 1994 through March 1996, and, in March 1994, executed and delivered to DWR a promissory note (the "Note") in the amount of \$181,615.50, payable in four equal installments. Claimant also alleged that the Note provided that if Hayden died or was terminated for any reason, the unpaid balance should be due and payable immediately. Claimant asserted that Hayden terminated his employment in March 1996, but failed to pay

the remaining principle or the 7% interest from March 1994. Claimant further asserted that it made written demands for repayment twice in May 1996, but Hayden has refused to honor them.

Respondent maintained that the Note provided for a set-off of 25% plus interest under specific conditions which were met, and therefore, he is entitled to a credit of \$45,403.87. Respondent further maintained that he is also entitled to a set-off of all damages incurred from entering the employment agreement with claimant.

RESPONDENT'S COUNTERCLAIM

Respondent alleged that prior to becoming an employee of DWR, he met with its representative, Margaret Black ("Black"). Respondent further alleged that Black made false representations of DWR policies such that if he wanted to have an assistant provided, he must produce annual revenue of \$750,000.00, with the proviso that if he paid 50% of her salary, and produced at least one-half the required amount, DWR would give him an assistant. Respondent also alleged that despite meeting those terms, DWR refused to let his assistant serve as his personal assistant. Respondent asserted that he would not have accepted employment, but for claimant's misrepresentations, and as a result, he has suffered loss of clients, loss of reputation, business, and income.

RELIEF REQUESTED

Claimant requested damages in the amount of \$136,211.64 plus interest at the legal rate from March 14, 1994 through the date of this award.

Respondent requested that claimant's claim be dismissed, and that he be awarded damages and all costs.

OTHER ISSUES CONSIDERED & DECIDED

On April 3, 1997 claimant moved to adjourn or in the alternative to dismiss respondent's counterclaim. The motion to adjourn was granted; therefore, the panel determined not to consider the motion to dismiss. Claimant moved that the \$750.00 adjournment fee be assessed against respondent Hayden; the Motion was denied.

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

1. Respondent Michael Hayden is liable and shall to Claimant Dean Witter Reynolds, Inc. \$90,807.74 in compensatory damages.
2. Respondent Michael Hayden is liable and shall to Claimant Dean Witter Reynolds, Inc. \$7,636.93 for interest.
3. Respondent Michael Hayden is liable and shall to Claimant Dean Witter Reynolds, Inc. \$23,452.00 for various tax liabilities to the State of South Carolina and the Internal Revenue Service.
4. Respondent Michael Hayden's counterclaims against Claimant Dean Witter Reynolds, Inc. are dismissed in their entirety.
5. The parties shall bear their respective costs and attorney's fees.
6. All other relief requests are denied in their entirety.

FORUM FEES

Pursuant to Rule 10205 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee previously deposited by the Claimant and have assessed a \$500.00 non-refundable filing fee to Respondent Hayden for the counterclaim and assessed the following forum fees:

$$2 \text{ sessions} \times \$750.00 = \$1,500$$

Claimant be and hereby is liable for the sum of \$1,500.00. Claimant has previously deposited \$750.00 with NASD Regulation. Therefore, Dean Witter Reynolds, Inc. shall pay to NASD Regulation the sum of \$750.00.

ARBITRATORS' SIGNATURES

I, Alexander I. Heckman, Esq., do hereby swear or affirm, that I am the person who executed this instrument which is my oath and award.

Alexander I. Heckman
Alexander I. Heckman, Esq.
Industry Chairperson

I, Thomas C. Borthwick, do hereby swear or affirm, that I am the person who executed this instrument which is my oath and award.

Thomas C. Borthwick
Thomas C. Borthwick
Industry Arbitrator

I, Sidney L. Sussman, do hereby swear or affirm, that I am the person who executed this instrument which is my oath and award.

Sidney L. Sussman
Sidney L. Sussman
Industry Arbitrator

Date of Decision: August 20, 1997

ARBITRATORS' SIGNATURES

I, Alexander I. Heckman, Esq., do hereby swear or affirm, that I am the person who executed this instrument which is my oath and award.

Alexander I. Heckman, Esq.
Industry Chairperson

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Industry Arbitrator

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Sidney L. Sussman
Industry Arbitrator

Date of Decision: August 20, 1997

ARBITRATORS' SIGNATURES

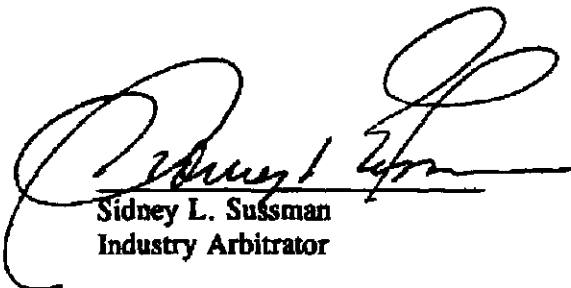
I, Alexander I. Heckman, Esq., do hereby swear or affirm, that I am the person who executed this instrument which is my oath and award.

Alexander I. Heckman, Esq.
Industry Chairperson

I, Thomas C. Borthwick, do hereby swear or affirm, that I am the person who executed this instrument which is my oath and award.

Thomas C. Borthwick
Industry Arbitrator

I, Sidney L. Sussman, do hereby swear or affirm, that I am the person who executed this instrument which is my oath and award.



Sidney L. Sussman
Industry Arbitrator

Date of Decision: August 20, 1997

*Arbitrator
#96-0371*