

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimant

Paragon Capital Corporation

96-03830

Name of Respondent

Engelbertus J. Mensink

REPRESENTATION

For Claimant, Paragon Capital Corporation ("Claimant"), appeared Jordan D. Becker, Esq., of Smith Campbell & Paduano, located in New York, New York.

Respondent, Engelbertus J. Mensink ("Respondent"), appeared pro se.

CASE INFORMATION

Statement of Claim filed on: August 28, 1996.

Claimant's Submission Agreement signed on: August 27, 1996.

Statement of Answer filed by Respondent on: October 21, 1996.

Respondent's Submission Agreement signed on: February 3, 1997.

Amended Statement of Answer filed by Respondent on: November 25, 1996.

Reply to Amended Statement of Answer filed by Claimant on: January 10, 1997.

HEARING INFORMATION

Pre-Hearing Conference: March 12, 1997 - One Session.

Hearing Date/Sessions: May 29, 1997 - Two Sessions.

The hearing was held in the offices of NASD Regulation, Inc. in New York, New York.

CASE SUMMARY

Claimant alleged Respondent was employed by Claimant from November, 1995 to January, 1996. Claimant further alleged that in November, 1995 Respondent signed an Association Agreement and a Registered Representative Compliance Agreement which stated that any disputes arising between Claimant and Respondent would be arbitrated.

Claimant maintained that, pursuant to the Addendum to the Association Agreement, Claimant would pay Respondent repayable draws in four equal installments of \$2,500. each, totaling \$10,000.00. Claimant further maintained that Respondent's employment was terminated with cause on January 19, 1996.

Claimant asserted that, by letter dated February 14, 1996, Claimant demanded repayment of the \$10,000 draw which was advanced to Respondent. Claimant alleged that Respondent refused to repay all or any part of the \$10,000 advanced to him despite due demand.

Respondent alleged that he entered into an employment contract with Claimant which provided for specific causes for termination of employment. Respondent maintained that this contract was breached when his employment was wrongfully terminated, without notice, on January 17, 1996 and without cause as defined in the employment contract. Respondent further maintained that Claimant filed an inaccurate Form U-5. Respondent filed a Counterclaim requesting that Claimant be ordered to amend Respondent's Form U-5 to reflect a voluntary termination.

RELIEF REQUESTED

Claimant requested compensatory damages of \$10,000.00, plus interest, costs and attorneys' fees.

Respondent requested that Claimant be ordered to amend Respondent's Form U-5; that Claimant's request for damages and costs be denied; that Respondent be awarded punitive damages and costs, including attorney's fees and disbursements.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed to receive conformed copies of the Award while the original remains on file with NASD Regulation, Inc.

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. Respondent be and hereby is liable and shall pay to Claimant the sum of TEN THOUSAND DOLLARS (\$10,000.00).
2. Claimant's request for interest is hereby denied.
3. Respondent's request that Claimant be ordered to amend Respondent's Form U-5 is hereby denied.
4. Each party shall bear its respective costs, including attorney's fees.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrator has determined that NASD Regulation, Inc. shall retain the \$500.00 previously deposited by the Claimant and have assessed the following Forum Fees:

| | | | | |
|-----------------------|---|----------|---|----------|
| 1 Pre-Hearing Session | x | \$300.00 | = | \$300.00 |
| 2 Hearing sessions | x | \$300.00 | = | \$600.00 |
| Total | | | = | \$900.00 |

1. Claimant be and hereby is liable and shall pay the sum of \$450.00, representing one-half of the forum fees assessed. In addition, Claimant be and hereby is liable and shall pay the sum of \$100.00 for the Member Surcharge. Claimant previously deposited \$600.00 with NASD Regulation, Inc. Therefore, Claimant will be issued a refund in the amount of \$50.00.
2. Respondent be and hereby is liable and shall pay the sum of \$450.00, representing one-half of the forum fees assessed.

Fees are payable to NASD Regulation, Inc.

ARBITRATOR'S SIGNATURE

Robert D. Herschman, Esq.
Robert D. Herschman, Esq.
Public Arbitrator - Chairman

I, Robert D. Herschman, 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.

Robert D. Herschman, Esq.
Robert D. Herschman, Esq.

Date of Decision: July 22, 1997