

**AWARD**

**NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION**

In the matter of the Arbitration Between

**Name of Claimant(s)**

Sutro & Co., Inc.

Arbitration  
No. 96-04154

**Name of Respondent(s)**

Raymond Bramer

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**REPRESENTATION**

For Claimant: Elizabeth S. Saleveson, Esq. and Barbara Smith, Esq., Howard, Rice, Nemerovski, Canady, Falk & Rabkin, San Francisco, California

For Respondent: Richard E. Levine, Esq., Levine & Skigen, San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: September 17, 1996

Reply of Sutro & Co., Inc. to Respondent's Counterclaims filed: December 13, 1996

Claimant's Submission Agreement signed: September 16, 1996

Answer, Affirmative Defenses and Counterclaims filed by Respondent: November 18, 1996

Respondent's Submission Agreement signed: November 13, 1996

### HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s): June 30, 1997 (two sessions)  
July 1, 1997 (two sessions)  
July 2, 1997 (two sessions)  
July 28, 1997 (three sessions)

Hearing Location: San Francisco, California

### CASE SUMMARY

Claimant Sutro & Co., Inc. (Sutro) alleged that this action arises out of the settlement of a claim of sexual harassment made by a former sales assistant in Sutro's Santa Rosa office against Sutro and her supervisor, Raymond Bramer. Sutro further alleged that because the subject sales assistant's claim arose as a result of Bramer's conduct, conduct which was prohibited by law and contrary to Sutro's policies, Sutro seeks indemnity for losses it suffered in the investigation, defense and settlement of the sales assistant's claims. Sutro further alleged that it is entitled to indemnity from Bramer under Labor Code Section 2865 and under the common law doctrine of equitable indemnity. Sutro further alleged that it is entitled to the full cost of the settlement plus attorneys' fees and costs incurred in investigating the sales assistant's claims and then defending the litigation.

Respondent Bramer denied each and every one of the claims, originally made by the subject sales assistant and paraphrased by Sutro at pages 3 through 4 of its Statement of Claims and alleged that the subject sales assistant's claim was premised upon allegations which were both false and insubstantial. Mr. Bramer further denied that Sutro conducted a reasonable investigation, or determined that Bramer had been guilty of inappropriate conduct. Mr. Bramer further denied that Sutro is entitled to indemnity either under Labor Code Section 2865, under equitable indemnity principles, or on any other basis and denied further, that Sutro is entitled to any award in any amount whatsoever. Mr. Bramer also asserted affirmative defenses.

### RELIEF REQUESTED

Sutro requested:

1. Consequential damages in an amount according to proof but totalling in excess of \$180,000.00, as indemnification for the full amount of the settlement paid to the sales assistant, and the fees and costs of defending the underlying action;
2. Interest on sums due; and
3. Other relief as the arbitrators deem proper.

Mr. Bramer requested that the panel enter an award in favor of Bramer and against Sutro on Sutro's claims for indemnity.

### OTHER ISSUES CONSIDERED AND DECIDED

On or about June 20, 1997, Respondent Bramer dismissed his counterclaims in this proceeding.

The parties have agreed that the Award in this matter may be executed in either 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 NASD Regulation, Inc. (NASDR).

### 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 Raymond Bramer is liable for and shall pay to Claimant Sutro & Co., Inc. the sum of \$25,000.00 in satisfaction of Claimant's claims.

Respondent Bramer may pay the award in one lump sum payment, or at his option, pay Claimant over a period of 60 months, in the amount of \$420.00 each month, and at the option of Respondent prepayments in increments of \$50.00, with all balance due and payable on the sixtieth month.

In the event of installment payments, the first payment shall commence on October 1, 1997. Respondent shall make payment on the first of each month, with a grace period through the fifth day of each month. The failure to timely pay or to make any payment in full shall result in the entire balance becoming due and payable immediately. No further action from the NASDR or its arbitration panel shall be necessary for Claimant to enforce the award in the event of such acceleration.

2. The parties shall each bear their respective costs including attorney's fees.

#### **FORUM FEES**

Pursuant to Section 10205(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASDR shall retain the \$750.00 hearing session deposit previously deposited by Sutro. Forum fees shall be split between the parties and are calculated as follows.

Nine hearing sessions @ \$750.00	=	\$6,750.00
Total fees assessed	=	\$6,750.00
 Sutro's share (50%)	=	 \$3,375.00
Credit for hearing deposit	=	\$ 750.00
Balance due	=	\$2,625.00
 Mr. Bramer's share	=	 \$3,375.00
Credit for hearing deposit	=	\$ 800.00
Balance due	=	\$2,575.00

Fees are payable to NASD Regulation, Inc.

#### **ARBITRATORS**

<u>Name</u>	<u>Public / Industry</u>
Robert L. Liu, Esq.	Public Arbitrator
Richard R. Krivcher	Public Arbitrator
Thomas W. Borden	Industry Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Robert L. Liu, Esq.

\_\_\_\_\_  
Richard R. Krivcher

Thomas W. Borden  
Thomas W. Borden

Date of Decision: \_\_\_\_\_

Date Served: September 5, 1997

Concurring Arbitrators' Signatures

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Robert L. Liu, Esq.



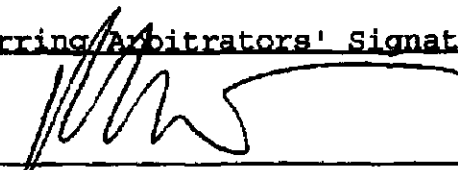
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Richard R. Krivcher

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Thomas W. Borden

Date of Decision: Aug. 1, 1997

Date Served: September 5, 1997

Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Robert L. Liu, Esq.

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Richard R. Krivcher

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Thomas W. Borden

Date of Decision: August 20, 97

Date Served: September 5, 1997