

N.A.S.D. AWARD**NASD Regulation, Inc. Office of Dispute Resolution**

In the Matter of the Arbitration Between

Name of Claimant

Anchor Management Group, Inc.

96-04440

Name of Respondent

Gerald J. Fasanella

REPRESENTATION

For Claimant: George L. Guerra, Esq. of Fowler, White, Gillen, Boggs, Villareal & Banker, P.A., Clearwater, FL.

For Respondent: Enrique Arroyo, Esq. of Arroyo & Arroyo, P.A., Indian Harbour Beach, FL.

CASE INFORMATION

Statement of Claim filed: October 7, 1996.

Claimant's Submission Agreement signed on: September 30, 1996.

Statement of Answer and Counterclaim filed on: December 2, 1996.

Respondent's Submission Agreement signed on: November 29, 1996.

Claimant did not submit a reply to the counterclaim.

HEARING INFORMATION

On March 31, 1997 a telephonic pre-hearing conference lasting one session was conducted with the arbitration panel.

On February 17, February 18, and February 19, 1998, as well as March 24 and March 25, 1998 in Tampa, FL hearings lasting nine sessions were conducted.

CASE SUMMARY

Claimant alleged the following: that the Respondent was an independent contractor for the Claimant, from October 1992 until April 1996, when he voluntarily terminated his relationship with the firm; that prior to joining the Claimant, the Respondent allowed his license to lapse after having been terminated by Merrill Lynch Pierce Fenner and Smith, Inc. for failure to meet company standards; that Claimant's

payout structure was incentive-based, with the payout increasing for higher production; that Respondent reached a 55% payout in 1994, that in 1995, as was the company's practice, he continued to receive a 55% payout on the expectation that his production would remain constant or go up; that Respondent never achieved production warranting the 55% level; that at the end of 1995 Claimant informed Respondent that his payout would be reduced to meet his actual production; that at Respondent's request it was reduced incrementally rather than summarily because of his personal financial difficulties; that the draws taken in excess of the actual amount earned were to be paid back over time through production; that after his first six months with the firm he was not productive, yet he took \$5,000.00 per month draw; that thereafter, Respondent decided to resign; that on the eve of his resignation he took all customer files and his personal property out of the Claimant's offices; that the following day he returned and agreed to bring back all of Claimant's property; and, that the company handbook and office keys were never returned.

Respondent denied all of the allegations contained in the Statement of Claim. Respondent further asserted the following counterclaim: that his employment contract was breached; that Claimant retaliated against him as a result of a copyright dispute between Claimant and Respondent's wife; that Claimant acted in a deliberate, calculated manner, in order to harm Respondent; and, that Claimant's intentional filing of a lawsuit against Respondent is part of a pattern of intimidation and coercion which directly violates NASD regulations.

RELIEF REQUESTED

Claimant requested an award of damages against Respondent Gerald J. Fasanella in the amount of \$23,811.72 together with an award of prejudgment interest, postjudgment interest, attorney's fees and costs, and for such other relief as may be deemed just and proper. Claimant further requested dismissal of the counterclaim.

Respondent requested that the Statement of Claim be dismissed in its entirety and that on his counterclaim he be awarded \$77,504.23 in compensatory damages plus continuing commissions, as well as costs, expenses, attorney's fees, and interest. Additionally, Respondent requested correction of his NASD Form U5.

OTHER ISSUES CONSIDERED & DECIDED

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 NASD Regulation, Inc.

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 Gerald J. Fasanella is found not liable on the Statement of Claim and the Statement of Claim is dismissed.
2. Claimant Anchor Management Group, Inc. is found liable on the counterclaim and is directed to amend the Respondent's NASD Form U5 to eliminate any language of wrongful taking of property by Respondent Gerald J. Fasanella.
3. Claimant Anchor Management Group, Inc. is found liable on the counterclaim and shall pay a total of \$12,316.00 to Respondent Gerald J. Fasanella representing compensatory damages, commissions,

interest, and expenses.

4. Respondent Anchor Management Group, Inc. is found liable on the counterclaim and is directed to notify Jackson National Life Insurance Company with respect to:

Elizabeth Frank	Policy #0022327470
Elizabeth Hall	Policy #0024051300
Beth Colon	Policy #0024061500
Geraldine H. Smith	Policy #002543442U

and ITT Hartford Life Insurance Company with regard to:

Elizabeth Frank	Policy #1538011
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to change the agency of record to Sun America Corp. or to Mr. Gerald Fasanella.

5. Pursuant to Florida Statutes Section 517.211, Anchor Management Group, Inc. shall pay Gerald Fasanella's attorney's fees as determined by a court of competent jurisdiction.

FORUM FEES

Pursuant to Rule 10205 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$6,000.00 (one pre-hearing conference with the entire panel x \$600.00 plus nine hearing sessions x \$600.00).

Respondent Anchor Management Group, Inc. is hereby assessed \$6,000.00 in forum fees for which NASD Regulation, Inc. shall retain the \$600.00 previously paid by them in partial satisfaction thereof, leaving a balance due in the sum of \$5,400.00.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures:

Name	Public/Industry
/S/	
<u>Beverly S. Gordon, Esq.</u>	Public
/S/	
<u>Marie T. Titolo</u>	Industry
/S/	
<u>James E. Garside</u>	Public

6/17/98

Date of Decision: _____