

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Richard D. Hammond

and

96-04794

Name of Respondent

Kirkpatrick, Pettis, Smith, Polian, Inc.

REPRESENTATION OF PARTIES

Richard D. Hammond ("Claimant") was represented by Bruce A. Hubbard, Esq., Hubbard & Johnson, P.C., Denver, Colorado.

Kirkpatrick, Pettis, Smith, Polian, Inc. ("Respondent") was represented by James M. Bausch, Esq., Cline, Williams, Wright, Johnson & Oldfather, Lincoln, Nebraska.

CASE INFORMATION

The Statement of Claim was filed on or about October 28, 1996. Submission Agreement of Claimant Richard D. Hammond was signed on October 28, 1996.

Statement of Answer was filed by Respondent Kirkpatrick, Pettis, Smith, Polian, Inc. on or about December 26, 1996. Submission Agreement of Respondent Kirkpatrick, Pettis, Smith, Polian, Inc. was signed on December 23, 1996 by Scott C. Hoyt.

HEARING INFORMATION

The hearing was held on Tuesday, August 26, 1997 for two (2) sessions and Wednesday, August 27, 1997 for two (2) sessions in Denver, Colorado for a total of four (4) sessions.

CASE SUMMARY

Claimant alleged that Respondent recruited him from New York, where he had been a successful institutional bond salesman averaging over \$300,000 in compensation. Claimant alleged that Respondent made various promises and representations to him which induced him to forego other offers and join Respondent in its Denver office. Claimant further alleged that a November 20, 1995

letter between the parties was a guaranteed contract for a fixed term of three years based upon language thereof and the course of negotiations. Claimant alleged that, after he joined the firm, Respondent breached the contract in several respects, never fulfilled the promises and representations made, injured Claimant's relationship with his largest client, Merrill Lynch Asset management, and improperly terminated him in September, 1996. Claimant alleged breach of contract and promissory estoppel.

In its Answer, Respondent denied the existence of an employment contract and alleged that the November 20, 1995 letter specifically stated: "This letter does not constitute an employment contract" and that Claimant's employment was on an "at will" basis. Respondent denied making the promises and representations alleged by Claimant, denied breach of any contract, and denied liability under any theory.

RELIEF REQUESTED

Claimant requested damages of:

\$387,000 in compensation through December 31, 1998 (16 months of \$15,000.00 guaranteed draw; one year at 50% of gross sales based upon his established production; plus \$27,000.00 in remaining car allowance; at least \$600,000.00 for lost clients and future business; and \$5,000, plus a 50% penalty and attorneys' fees under the Colorado Wage Act. Colo. Rev. Stat. § 8-4-101 *et seq.*, for wages wrongfully withheld.

Respondent requested that the panel deny the claim and assess costs.

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 original(s) 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 Kirkpatrick, Pettis, Smith, Polian, Inc. shall be and hereby is liable for and shall pay to the Claimant Richard D. Hammond the sum of \$255,000.00 as compensatory damages.

2. No interest or attorneys' fees are awarded herein.
3. Each party shall bear its own cost, expenses and fees, including attorneys' fees and expert witness fees, incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each pre-hearing conference, if any. There were four (4) sessions x \$1,000 = \$4,000 in forum fees. Pursuant to §10205(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10205(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500 and shall retain as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Richard D. Hammond. Claimant Richard D. Hammond shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,000 as additional forum fees. Respondent Kirkpatrick, Pettis, Smith, Polian, Inc. shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$2,000 as the balance due for forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall assess the non-refundable member surcharge in the amount of \$500. Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

/s/ Cletus E. Byrne, Jr.
Cletus E. Byrne, Jr.
Industry Arbitrator, Presiding Chair

Dated: August 28, 1997

/s/ Roger T. Felthoven
Roger T. Felthoven
Industry Arbitrator

August 28, 1997

/s/ William M. Pendleton
William M. Pendleton
Industry Arbitrator

August 28, 1997