

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant-Counterrespondent

Angelo Gordon & Co., L.P.

96-04878

Name of Respondent-Counterclaimant

Jeffrey Eisenberg

Names of Third Party Respondents

John M. Angelo
Michael L. Gordon

REPRESENTATION

Claimant Angelo, Gordon & Co., L.P. ("Claimants") was represented by Joel J. Bellows, Esq. and Nicholas P. Ivarone, Esq. of the law firm of Bellows & Bellows, P.C., Chicago, Illinois.

Respondent-Counterclaimant Jeffrey Eisenberg ("Eisenberg") was represented by Bruce S. Sperling Esq., Mitchell H. Macknin, Esq. and Robert D. Cheifetz, Esq. of law firm of Sperling, Slater & Spitz, P.C., Chicago, Illinois.

Third Party Respondents John M. Angelo ("Angelo") and Michael L. Gordon ("Gordon") were represented by Joel J. Bellows, Esq. and Nicholas P. Ivarone, Esq. of the law firm of Bellows & Bellows, P.C., Chicago, Illinois.

CASE INFORMATION

Claimant filed its Statement of Claim on November 1, 1996.
Claimant's Submission Agreement was executed by Michael L. Gordon, Chief Operating Officer of Angelo Gordon & Co., L.P. on October 31, 1996.

Respondent Eisenberg filed his Statement of Answer and Counterclaim on January 21, 1997.
Eisenberg filed his Reply to Third Party Respondents Amendment to their Answer to Eisenberg's

Counterclaim on October 7, 1997.

Eisenberg filed a Supplement to his Counterclaim on April 30, 1998, pursuant to leave of the panel granted April 28, 1998.

Eisenberg signed his Submission Agreement on December 19, 1996.

Third Party Respondents Angelo and Gordon filed their reply to Statement of Counterclaim on March 3, 1997.

Angelo and Gordon signed their Submission Agreements on March 3, 1997.

Angelo and Gordon filed their Answer to Supplement to Eisenberg's Counterclaim on May 18, 1998.

HEARING INFORMATION

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| Pre-Hearing Conference: | September 22, 1997 | One session, Full Panel |
| | October 29, 1998 | One session (via telephone) Chairman only |

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| Hearing Dates/Sessions: | November 12, 1997 | Two sessions |
| | November 13, 1997 | Two sessions |
| | November 14, 1997 | Two sessions |
| | November 9, 1998 | Two sessions |
| | November 10, 1998 | Two sessions |
| | November 11, 1998 | Two sessions |
| | November 19, 1998 | Two sessions |
| | November 20, 1998 | Two sessions |
| | May 20, 1999 | Two sessions |
| | June 10, 1999 | Two sessions |

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| Hearing Location: | NASD Regulation, Inc. Office of Dispute Resolution New York, New York |
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CASE SUMMARY

Claimant alleged, among other things, that the proceedings in this case began after it filed a claim seeking declaratory relief concerning the compensation agreement that existed between itself and Eisenberg, a former at will employee without a written employment agreement. Claimant's declaratory relief also sought recovery of certain fees that the Claimant paid to Eisenberg on monies deposited with Claimant, which allegedly consisted of \$31,677 in monies paid to Eisenburg. Claimant asserted this amount represented a portion of the fees that Eisenberg received as a result of Eisenburg's introduction of the firm to a limited partnership

known as JRA Enterprises, L.P. ("JRA"), which Claimant alleged is comprised of 79 trusts, some of which are for the direct benefit of Eisenberg. Claimant contended that the JRA trust constituted a "family money" and that had Eisenberg not concealed from Claimant that he was a beneficiary of this account, that in accordance with firm policy that was disclosed to Eisenberg, no monies would have been paid to him.

Eisenberg maintained that Claimant was obligated to pay to him continuing money-raising fees after the termination of his employment, for as long as the money remained invested at Claimant's business. Eisenberg further maintained that Claimant had no basis for return of the money-raising fees that he had been paid on the JRA account.

Eisenberg raised Affirmative Defenses of unclean hands, waiver, estoppel, and acquiescence.

Eisenberg filed a counterclaim and alleged, among other things, that he was entitled to a pro-rated bonus from January 1, 1996 to June 11, 1996, the date of his termination from Claimant's business. Eisenberg also alleged that Claimant orally promised him that he would be paid 20% (in some cases 10%) of all management and performance fees earned on funds that Eisenberg introduced to the firm and that, according to both an express and oral promise by Claimant as well as according to industry custom and practice, that Eisenberg is entitled to the management and performance fees earned on funds that Eisenberg introduced to the firm regardless of whether he serviced the client or remained employed at Claimant's business. Eisenberg further alleged in his counterclaim that he was paid all commissions due him through the date of his termination of employment. Eisenberg further asserted that he is owed all commissions from June 11, 1996 forward. Eisenberg also sought another accounting and payment involving six real estate limited partnerships that were organized, and managed by Claimant. Eisenberg alleged that Claimant promised him an override consisting of a 10% share of all management and performance fees on any real estate partnerships that were "created" by him. Eisenberg also alleged that Claimant tortiously interfered with his right to access to an owner's meeting and to invest additional capital in Viva Las Vegas L.L.C. Eisenberg asserted that Viva Las Vegas is operated by an affiliate of Claimant.

Eisenberg alleged Angelo and Gordon, the general partners of Claimant, made Eisenberg a partner of the Claimant effective June 1, 1996; that Angelo and Gordon had understated Eisenberg's partnership interest and partnership income; and that Eisenberg sought an accounting for the value of, and payment for, this partnership and the income he allegedly earned. Eisenberg further alleged that Angelo and Gordon violated a fiduciary duty owed him as a limited partner of Claimant by: 1) under reporting both his partnership share and income; and 2) by under reporting the value of real estate and other illiquid assets with the intention of lowering the amount allegedly owed Eisenberg for the "override" related to oral agreement concerning the real estate partnership he claimed existed between him and Claimant.

Claimant categorically denied all of Eisenberg's counterclaims alleging that the approximately \$1.2 million paid to Eisenberg, during the four year period beginning September 15, 1992 and ending June 11, 1996, fully compensated him for all his efforts at the firm.

Angelo and Gordon responded to Eisenberg's third party claim that his partnership interest had been unstated and the income owed him from that interest had been under reported by alleging that he was never actually a partner since he never signed the partnership documents nor contributed the mandatory \$100 capital contribution and, in any event, was terminated eleven days later for cause. Angelo and Gordon further alleged that if Eisenberg was to be considered as having been "made" a partner as of June 1, 1996 as he claimed, that he was fully paid for the income generated by his 0.5% of the partnership from June 1, 1996 through June 11, 1996, the date of his termination from the firm. Angelo and Gordon alleged that any partnership interest granted a person in Claimant is discretionary and that any partnership interest can be reduced, increased or revoked at anytime by Angelo and Gordon. Angelo and Gordon denied that they caused any real estate or illiquid assets to be under reported.

As Affirmative Defenses, Claimant alleged failure to state a claim, failure to mitigate, lack of consideration, violations of NASD Rule IM 2420-2 and NASD Rule 3060, the Statute of Frauds, and unclean hands. Eisenberg replied that the Statute of Frauds was inapplicable because he had performed the oral agreements, as did Claimant; that Claimant had admitted its agreement to pay Eisenberg money-raising fees; that there was an entire series of writings from Claimant that otherwise identified, set out and accounted for Eisenberg's money-raising fees; that Claimant otherwise was estopped to raise the Statute of Frauds because it induced Eisenberg to perform, to its substantial benefit, in reliance on its promise to pay Eisenberg his fees; and that Claimant was otherwise liable for the fees under the theory of unjust enrichment, which is not even subject to the Statute of Frauds.

RELIEF REQUESTED

Claimant requested \$31,677 in "commissions" paid Eisenberg relative to the JRA Enterprises account. Claimant also requested reasonable attorneys fees as a sanction for the filing of various allegedly frivolous portions of the Counterclaim which either had no basis in law or were abandoned by Respondent. Claimant specifically requested the following declarations:

1. That Claimant's compensation agreement with Eisenberg did not include the payment of "trailing commissions" or, in the alternative, that such an oral agreement violates the New York Statute of Frauds and is void;
2. That Claimant's compensation agreement with Eisenberg did not include any agreement to pay Eisenberg any portion of management fees, performance fees or any profits from any real estate limited partnerships developed by Claimant or, in the alternative, that such

an oral agreement violates the New York Statute of Frauds and is void;

3. That Eisenberg is not entitled to any bonus for the year 1996 or, in the alternative that Eisenberg forfeited any right to such compensation by his actions;
4. That Eisenberg is not a partner of Claimant and that Eisenberg has received full compensation for his 0.5% partnership interest for the eleven (11) period he might have been considered a partner; and
5. That Eisenberg's transactions in CPS for the JRA Enterprises account constituted front running.

Eisenberg requested compensatory damages of at least \$1,301,323; a declaration that Claimant is obligated to continue to pay him money-raising fees as long as the money remains invested in Claimant's company; a declaration that Claimant is obligated to pay Eisenberg a 10% override on its profits from its Real Estate Funds; punitive damages of \$600,000; and, sanctions for Claimant's repeated discovery abuses. More specifically Eisenberg, requested:

1. That Claimant pay Eisenberg a pro-rata bonus for 1996 in the amount of \$275,000 plus prejudgment interest (through June 30, 1999) of \$61,875;
2. A declaration that Claimant be obligated to pay Eisenberg money-raising fees regarding the investors specified below. As and when Claimant receives management or performance fees regarding any such investor, for any reporting period subsequent to June 11, 1996, Claimant shall pay to Eisenberg the percentage, specified as follows regarding each investor of such fees: Edward Kaplan 20%, JRA Enterprises 20%, Michael Feiner, 20%, Dajar Enterprisers 20%, Midway Holdings 20%, Aaron & Renee Locker, 20%, ZIH Corp., 20%, IRVRU Co., 20%, MSB Family Trust, 20%, Leonard Sherman 20%, Ranger Diversified Investment Fund, 20%, Spungin 20% (Ontario, Joel Spungin and Prairie), Mesirow 20%, Grosvener 10%, (Multi-Strategy, Multi-Manager, Master Fund, Royal Bank of Canada and CIBC) Jewish Federation, 10% (Employees Retirement Income Trust, Jewish Federation of Metropolitan Chicago) For the period for which the amount of such management fees and performance fees that Claimant has received is presently known (ie for the period June 12, 1996 through March 31, 1999) Eisenberg requested that Claimant pay Eisenberg \$688,305. Eisenberg also requested that Claimant pay prejudgment interest of \$73,190 (through June 30, 1999) on said amount;
3. A declaration that Claimant be obligated to pay Eisenberg 10% of Claimant's net profits from its real estate funds known as AG Realty I, AG Realty II, Nutmeg Realty I, Nutmeg Realty II, AG Spruce, AGEA and AGCP Realty, as when Claimant realizes such profits.

Eisenberg also requested that the net profits shall be deemed equal to the performance fees realized by Claimant on such funds. Additionally that, Claimant be accountable for and immediately pay Eisenberg any such net profits that have already been realized;

4. That Claimant and Third Party Respondents shall jointly and severally pay compensatory damages of \$202,953 and punitive damages of \$600,000;
5. That Claimant pay reasonable attorney's fees (including \$10,000 as a sanction for Claimant's repeated discovery abuses), costs, and assessment of all forum fees against Claimant and Third Party Respondents;
6. Post-award interest of 9% per annum as to all amounts of which Eisenberg is awarded immediate payment under this award.

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 the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimant's claim is denied in its entirety.
2. That Angelo Gordon & Co., L.P. is liable to Jeffrey Eisenberg and shall pay to Jeffrey Eisenberg \$285,750; inclusive of interest.
3. That Respondent's claim for punitive damages is denied in its entirety.
4. That the parties' requests for sanctions are denied in its entirety.
5. That each party shall bear its own costs and expenses, including attorney's fees, except as Other Costs and Forum Fees are addressed below.
6. That any and all relief requests not specifically addressed herein are denied in their entirety.

OTHER COSTS

That pursuant to Rule 10333 of the Code, Claimant was assessed a member surcharge fee of \$200 that it paid.

Claimant owes administrative costs for unpaid tape duplication in the amount of \$90. Eisenberg owes administrative costs for unpaid tape duplication in the amount of \$180.

FORUM FEES

Pursuant to Rule 10332c/10205c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

$(1 \text{ pre hearing conference with the panel} \times \$1,000) + (1 \text{ pre hearing conference with one arbitrator} \times \$300) + (20 \text{ hearing sessions} \times \$1,000) = \$21,300$

The panel has decided to assess forum fees so that Claimant and third party Respondents Angelo and Gordon are assessed 50% and that Eisenberg is assessed 50%. Claimant, Angelo and Gordon are assessed forum fees in the amount of \$10,650; however, Claimant is entitled to offset this amount with its hearing session deposit of \$600 so that the amount due as a forum fee is \$10,050.

Eisenberg is assessed forum fees in the amount of \$10,650; however, he is entitled to offset this amount with his hearing session deposit of \$1,500 so that the amount due from Eisenberg as a forum fee is \$9,150.

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

Date Award Signed

Concurring Arbitrators' Signatures

July 19, 1999

Allen Kilik

Allen Kilik, Esq., Chairman
Public Arbitrator

I, Allen Kilik, 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 E. Bartkus, Esq., Panelist
Public Arbitrator

I, Robert E. Bartkus, 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.

Anthony George Gero, Panelist
Industry Arbitrator

I, Anthony George Gero, 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.

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Date Award Signed

Concurring Arbitrators' Signatures

Allen Kilik, Esq., Chairman
Public Arbitrator

I, Allen Kilik, 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.

7/21/99

Robert E. Bartkus, Esq., Panelist
Public Arbitrator

I, Robert E. Bartkus, 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.



Anthony George Gero, Panelist
Industry Arbitrator

I, Anthony George Gero, 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.

Date Award Signed

Concurring Arbitrators' Signatures


Allen Kilik, Esq., Chairman
Public Arbitrator

I, Allen Kilik, 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 E. Bartkus, Esq., Panelist
Public Arbitrator

I, Robert E. Bartkus, 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.

7/19/1999


Anthony George Gero, Panelist
Industry Arbitrator

I, Anthony George Gero, 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.

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Date Award Served by NASD Regulation: July 20, 1999