

## **NASD Regulation, Inc., Award**

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In the Matter of Arbitration Between

Bruce D. Roth,  
Claimant,

and

No. 96-05233

Sunpoint Securities, Inc., and  
Spencer Griffith,  
Respondents.

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### **REPRESENTATION OF PARTIES**

Claimant, Bruce D. Roth ("Roth") was represented by Kenneth S. Saks, Esquire of Oliva & Saks, L.L.P. located in San Antonio, Texas.

Respondent, Sunpoint Securities, Inc. ("Sunpoint") was represented by Janie L. Frank, Esquire of Shannon, Gracey, Ratliff and Miller, Esquire located in Fort Worth, Texas.

### **CASE INFORMATION**

Claimant Roth's Statement of Claim was filed on or about December 5, 1996. Claimant Roth's Amended Statement of Claim was filed on or about June 9, 1997. Claimant Roth's Submission Agreement was signed on November 22, 1996.

Respondent Sunpoint's Statement of Answer was filed on or about January 29, 1997. Respondent Sunpoint's First Amended Statement of Answer was filed on or about February 13, 1997 and Respondent Sunpoint's Second Amended Statement of Answer and Counterclaim was filed on or about March 19, 1997. Respondent Sunpoint's Submission Agreement was signed on January 24, 1997 by William Perry, Sunpoint's Vice President of Compliance.

### **HEARING INFORMATION**

There was a Large and Complex case Administrative Conference held on March 7, 1997 at 10:00 a.m. for one (1) session. There was also a pre-hearing conference held on April 30, 1997 at 10:00 a.m. for one (1) session. The hearing was held over eleven (11) days in twenty (20) sessions: on September 17, 1997 at 9:00 a.m. for one (1) session, on December 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup>, 1997 at 9:00 a.m., for two (2) sessions each day, and February 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup>, 1998 at 9:00 a.m. for two (2) sessions each day and February 5<sup>th</sup>, 1998 at 9:00 a.m. for one (1) session, and finally on March 23<sup>rd</sup>, 24<sup>th</sup> and 25<sup>th</sup>, 1998 at 9:00 a.m. for two (2) sessions each day, in Dallas, Texas.

### CASE SUMMARY

Bruce D. Roth ("Claimant") asserted that Spencer Griffith, a Vice President for Sunpoint, who was familiar with Claimant's background and experience in opening new offices in the securities industry, recruited him for a position at Sunpoint Securities as a District Director and Senior Vice President in the San Antonio, Texas area. Claimant indicated that he went through the typical Representative Agreement with Griffith, both initialing changes which would be more appropriate for his position, and to reflect the three and a half (3 ½) year employment agreement, beginning on June 20, 1996 and renewable thereafter. Claimant's responsibilities were said to have included the establishment of a San Antonio District office and later to establish other offices in the territory of San Antonio and all of Texas South of San Antonio. On June 25, 1996, Claimant said he received letters of congratulations from William Perry, the Vice President of Compliance at Sunpoint and Marvin Sapaugh on receiving approval as a registered representative for Sunpoint. Nevertheless, Claimant then stated that he received a termination letter on August 29, 1996 which asserted that Claimant was in breach of the Representative Agreement for failing to receive licensing approval from the State of Arizona. Claimant then relayed how he met with Sunpoint's CEO, Van Lewis III and Spencer Griffith on September 2, 1996, where Van Lewis apologized and confessed that a mistake was made in terminating Roth and that he gave Roth "his word" and a handshake that his employment at Sunpoint was secure and that a similar event would not happen again. Claimant alleged that despite performing in accordance with the Representative Agreement, on October 3, 1996, he received a letter via facsimile from Sunpoint that he had been terminated due to his inadequate level of production, in violation of the Representative Agreement. Furthermore, Claimant said that after the termination, Sunpoint refused to provide material and necessary information regarding his license, which was necessary to obtain other employment in the industry. Claimant asserted that Respondent Sunpoint's actions constituted: violations of NASD rules and regulations; an agency relationship, making Sunpoint liable for the actions of its agents, specifically Spencer Griffith, and liable based on reliance and an implied warranty of authority in the alternative; breach of contract; promissory estoppel; common law fraud and misrepresentation; and restraint of trade.

Sunpoint Securities, Inc., ("Respondent,") denied any wrongdoing as alleged in the Claimants' Statement of Claim. Respondent contended that Spencer Griffith had neither apparent nor actual authority to hire Claimant as a District Director or Senior Vice President, nor authority to endorse the Claimant's initialed version of the employment agreement, and that these modifications were never accepted by Sunpoint. Therefore, Sunpoint said that Claimant was merely hired as a Registered Representative, terminable at will upon thirty (30) days notice. Respondent Sunpoint also asserted that upon hiring Claimant, they made him a loan of \$25,000.00, payable upon termination, which Claimant has to date failed to repay. Finally, Respondent asserted that Claimant's claims for damages are inflated.

### **RELIEF REQUESTED**

Claimant, Bruce D. Roth, requested an award for \$3,817,479.00, including exemplary damages, pre-judgment and post-judgment interest as provided by law, reasonable attorneys fees, cost of suit, including filing fees and deposit, and such other and further relief, both general and special, legal and equitable to which Claimant may be justly entitled.

Respondent, Sunpoint Securities, Inc., requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorney fees. In its Counterclaim, Respondent Sunpoint Securities, Inc., requested an award for \$25,000.00 including the amount due of a loan, together with interest, costs, and attorneys fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Upon agreement of Claimant Bruce D. Roth, on February 17, 1998, Respondent Spencer Griffith was dismissed with prejudice from these proceedings. Therefore, the panel made no determinations as to Respondent Spencer Griffith.

Upon review of the file and the representations made by/on behalf of Claimant, Bruce D. Roth, the undersigned Arbitrators have determined that Respondents, Sunpoint Securities, Inc., have been properly served with the Statement of Claim pursuant to Rules 10302 and 10314 of the NASD Code of Arbitration Procedure ("the Code.") The undersigned Arbitrators have also determined that Respondents, Sunpoint Securities, Inc., did receive due notice of the hearing as required under Rule 10318 of the Code.

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 Regulation, Inc. Office of Dispute Resolution.

### AWARD

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

1. That Respondent, Sunpoint Securities, Inc., is liable for and shall pay to Claimant, Bruce D. Roth, the sum of \$14,000.00 in actual damages; and
2. That Respondent, Sunpoint Securities, Inc., is liable for and shall pay to Claimant, Bruce D. Roth, the sum of \$13,000.00 in attorneys' fees pursuant to the Texas Civil Practices Act and Remedies Code; and
3. That the Respondent Sunpoint Securities Inc.'s Counterclaim is denied with prejudice; and
4. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

### FORUM FEES

Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were two (2) pre-hearing conferences x \$600.00 and there were twenty (20) hearing sessions x \$1,000.00 = \$20,600.00 in forum fees. Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (the "Code") 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 Rule 10332(c) of the Code, the NASD Regulation, Inc., Office of Dispute Resolution **shall retain** the non-refundable filing fee of \$500.00 and **shall retain** as forum fees the hearing session deposit of \$1,000.00 previously deposited with the NASD Regulation, Inc., Office of Dispute Resolution by Claimant, Bruce D. Roth. Furthermore, NASD Regulation, Inc., Office of Dispute Resolution **shall retain** as forum fees the non-refundable filing fee of \$500.00 and **shall retain** as forum fees the hearing session deposit of \$600.00 for the counterclaim of Respondents, Sunpoint Securities, Inc. The NASD Regulation, Inc., Office of Dispute Resolution **shall retain** the postponement fee of \$500.00 previously deposited by Respondent, Sunpoint Securities, Inc.

Respondent, Sunpoint Securities, Inc., is liable for one-half (1/2) of the forum fees in this matter and **shall pay** the sum of \$9,700.00 to NASD Regulation, Inc., Office of Dispute Resolution (\$10,300.00 owed - \$600.00 hearing session deposit paid.) Claimant, Bruce D. Roth is liable for one-half (1/2) of the forum fees in this matter and **shall pay** the sum of \$9,300.00 to NASD Regulation, Inc., Office of Dispute Resolution (\$10,300.00 owed - \$1,000.00 hearing session deposit paid.)

Pursuant to Rule 10333 of the Code, the NASD Regulation, Inc., Office of Dispute Resolution **shall retain** the non-refundable member surcharge of \$500.00 previously deposited with the NASD Regulation, Inc., Office of Dispute Resolution by Respondent, Sunpoint Securities, Inc.

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

**Concurring Arbitrators' Signatures:**

/s/ William M. Lamoreaux

May 21, 1998

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William M. Lamoreaux, Esq.  
Chairperson  
Public Arbitrator

\_\_\_\_\_  
Date

/s/ Richard A. Knudsen

May 22, 1998

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Richard A. Knudsen, Esq.  
Panelist  
Public Arbitrator

\_\_\_\_\_  
Date

/s/ David L. Baker

May 21, 1998

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David L. Baker  
Panelist  
Industry Arbitrator

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Date