

**N.A.S.D. REGULATION AWARD**

**NASD Regulation, Inc. Office of Dispute Resolution**

**In the Matter of the Arbitration Between**

**Name of Claimant**

**Monterey Bay Securities, Inc.**

**96-05342**

**Name of Respondent**

**Thomas Marsella**

**REPRESENTATION OF PARTIES**

**For Claimant: William P. Torngren, Esq., Old Sacramento, California.**

**For Respondent: He represented himself, pro se.**

**CASE INFORMATION**

**Claimant's Statement of Claim was filed on or about December 2, 1996.**

**Claimant's Submission Agreement was signed on November 26, 1996.**

**The Statement of Answer was filed on or about April 2, 1998.**

**HEARING INFORMATION**

**Pre-hearing conferences were held on: February 2, 1998 one session;**

**April 27, 1998 one session.**

**The hearing was held in San Francisco, California on: April 22, 1998 one session;**

**June 4, 1998 one session.**

**CASE SUMMARY**

**Claimant alleges that the Respondent is liable for attorneys' fees and costs associated with the legal defense of a prior arbitration pursuant to a written agreement dated August 17, 1992.**

**Respondent denies each and every claim asserted in the Statement of Claim. Respondent specifically argues that no sums are owed to the Claimant with respect to the legal defense of the prior**

NASD Arbitration No. 96-05342

Award Page 2 of 3

arbitration. Alternatively, Respondent argues that he was responsible for no more than 50% of any such fees and costs.

### RELIEF REQUESTED

Claimant requested an award in the amount of \$19,550, plus attorneys' fees.

Respondent requested that the claim be dismissed.

### OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file the undersigned arbitrator has determined the Thomas Marsella did not file with NASD Regulation, Inc. a Uniform Submission Agreement. The undersigned arbitrator has further determined that Mr. Marsella is required to submit to arbitration pursuant to Rule 10201 of the NASD, Regulation, Inc. Code of Arbitration Procedure and is hereby bound by the decision rendered in this matter.

The parties agreed to receive conformed copies of the award while the original remains on file with NASD Regulation, Inc., Office of Dispute Resolution

### AWARD

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

1. Each and every claim asserted in the Statement of Claim is dismissed;
2. Each side to bear their own costs, including attorneys' fees.

### FORUM FEES

Forum fees are calculated at the rate of \$300 per hearing session and \$300 for each pre-hearing conference, if any. There were 2 pre-hearing conference sessions x \$300 plus 2 hearing sessions x \$300 = \$1,200 in forum fees. Pursuant to §10332(b) of the NASD Regulation, Inc., Office of Dispute Resolution 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 § 10332(c) of the Code, all forum fees are assessed against the Claimant.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. shall retain the non-refundable filing fee in the amount of \$500 and shall retain the hearing session deposit made by the Claimant in the amount of \$300.

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NASD Arbitration No. 96-05342

Award Page 3 of 3

Pursuant to Rule 10333 of the Code, Respondent Monterey Bay Securities, Inc. shall pay to NASD Regulation, Inc. the \$200 past due member surcharge previously invoiced.

Fees are payable to the NASD, Regulation, Inc.

Public / Industry

  
Ralph S. Blascovich, Esq.

Industry Arbitrator

Date Served: June 5, 1998