

## NASD REGULATION AWARD

In the Matter of the Arbitration Between

Name of Claimant

J.W. Charles Securities, Inc.

96-05654

Name of Respondent

Andrew Kevlahan

REPRESENTATION

For Claimant J.W. Charles Securities, Inc. ("claimant") appeared Gregory Tendrich, Esq. in-house counsel for J.W. Charles Securities, Inc.

Respondent Andrew Kevlahan ("respondent") appeared pro se.

CASE INFORMATION

The Statement of Claim was filed on December 16, 1996.

Claimant's Submission Agreement was signed on December 16, 1996.

Statement of Answer was filed by Respondent, Andrew Kevlahan on February 20, 1997.

Respondent, Andrew Kevlahan's Submission Agreement was signed on February 13, 1997.

HEARING INFORMATION

Hearing Date/Sessions:

July 2, 1997

Two Sessions

The hearing was conducted at the offices of NASD Regulation, Inc. located in New York City, New York.

CASE SUMMARY

Claimant alleged that during February 1996, respondent and claimant engaged in discussions about respondent joining claimant as a registered representative. Claimant maintained that shortly thereafter, claimant and respondent entered into a Standard Registered Representative Agreement ("Standard Agreement"), which outlined the basic obligations common to all brokers of claimant. Claimant further maintained that an Addendum provided the compensation provisions specific to respondent.

Claimant alleged that the Addendum provided that respondent would remain employed with claimant for three years and he would receive a 50% payout on all commissions generated through July, 1996. Claimant further alleged that if respondent generated in excess of \$75,000 in gross commissions through July, 1996, claimant agreed to pay respondent a 50% payout for the period of August, 1996 through January, 1997. Claimant maintained that the Addendum also stated that if respondent terminates his

association with claimant prior to February 1, 1998, he agreed to reimburse claimant the differences between the payouts received versus the normal grid which respondent would have received had he not been paid the higher payouts.

Claimant alleged that on September 9, 1996 respondent resigned from claimant, and that during those seven months respondent generated approximately \$119,453.54 in gross commissions, and was paid \$58,899.69 based on a 50% payout. Claimant maintained that at the termination of respondent's employment with claimant he was indebted to claimant for \$11,021.72 but respondent has ignored and refused to repay the monies owed to claimant.

Respondent maintained that prior to his working in claimant's New York City branch office he had been affiliated with claimant's company for the past 17 months and, therefore, he never thought it necessary to discuss any contractual arrangements. Respondent further maintained that at no time was anything said about a contract or was he shown a grid schedule. Respondent contended that on February 1, 1996 he was confronted with the Addendum and told to sign it or he would not be paid. Respondent further contended that he was coerced into signing the Addendum and, therefore, the contract should be void from the beginning, as if it had never signed.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$10,000.00, pre and post judgment interest, attorney's fees, reimbursement of the NASD filing fee in the amount of \$575.00, and member surcharge in the amount of \$100.00, and any all other costs associated with this proceeding.

Respondent requested that the claim be dismissed, with 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 remains on file with NASD Regulation

#### **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. Claimant's requests for compensatory damages, interest, attorney's fees and costs are hereby denied.
2. All other requests are hereby denied.

#### **FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrator has determined that NASD Regulation, Inc. shall retain the \$500.00 filing fee and \$100.00 member surcharge and have assessed the following forum fees:

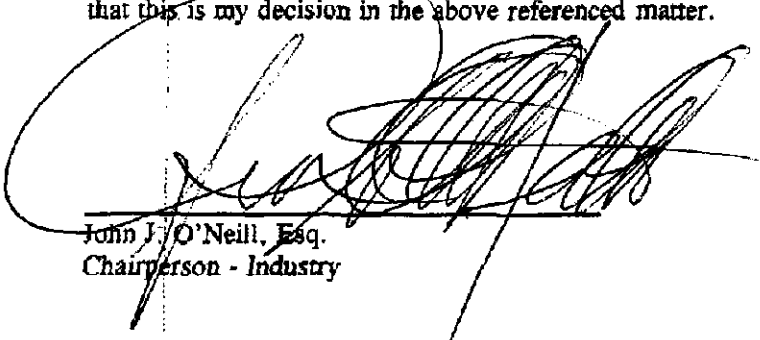
2 sessions	x	\$75.00	=	\$150.00
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1. Claimant be and hereby is liable for the sum of \$150.00, representing the total amount of forum fees assessed.

Fees are payable to the NASD Regulation, Inc.

**ARBITRATOR'S SIGNATURE**

I, John J. O'Neill, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that this is my decision in the above referenced matter.



John J. O'Neill, Esq.  
Chairperson - Industry

Date of Decision: August 7, 1997