

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Jonathan Orban,
Claimant,

vs.

97-00006

Norcross Securities, Inc., a/k/a
Norcross & Company,
Respondent.

REPRESENTATION OF PARTIES

Jonathan Orban ("Claimant") was represented by John W. Clark, Jr., Esq., Dallas, Texas.

Norcross Securities, Inc., a/k/a Norcross & Company ("Respondent") was represented by Robert L. Dossey, Esq., Phoenix, Arizona.

CASE INFORMATION

Claimant filed the Statement of Claim on or about December 30, 1996. Claimant's Submission Agreement was signed on December 27, 1996.

Respondent filed the Statement of Answer on or about March 7, 1997. Respondent's Submission Agreement of Respondent was signed on April 25, 1997.

HEARING INFORMATION

The Arbitration Panel held a hearing on September 3, 1997 in Phoenix, Arizona for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that: While employed by Respondent, Claimant earned and became entitled to payment, pursuant to his Employment Agreement, of commissions in connection with transactions between Respondent and Mobil Mini, Inc.; as a result of the transaction, Claimant was only paid one-half (1/2) of the commissions owed to him; the mispayment to Claimant was intentional and wilful on behalf of the Respondent; Claimant has never waived, modified, released or discharged Respondent from any obligations owed to Claimant as a result of Claimant's employment contract; Respondent's assertion that paragraphs were omitted from the employment

contract were false, the contract between the parties was entered into in good faith, and the document was prepared by Respondent; Respondent's actions toward Claimant were part of a repeated and regular fraudulent business practice and course of dealing permitted by Respondent; Claimant is not the only former employee told that there was an omission in their employment contract after a substantial commission was earned; and Claimant has made demand for Respondent to pay the amount owed to Claimant, and Respondent has refused to pay such sums.

Unless specifically admitted therein, Respondents denied the allegations set forth in the Statement of Claim.

RELIEF REQUESTED

Claimant requested an award in the amount of \$59,220.00, plus reasonable attorneys' fees of no less than \$18,000.00, plus interest and costs, to be determined at the time of the hearing.

Respondents asked the panel to award nothing on his Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

Claimant requested an Order barring Respondent's Answer. After review of the motion and response, and deliberation, the panel denied the motion. Claimant also requested an early setting for the hearing. After considering the parties documents and deliberation, the arbitrators set the hearing for September 3, 1997.

On June 9, 1997, Claimant filed an additional motion. After deliberation, the panel: Directed Respondent to provide a point of contact for all matters relating to this case; and directed Respondent to comply with the provisions of NASD discovery rules in response to Claimant's requests. The Order was to be complied with by July 31, 1997.

On August 13, 1997, Claimant filed a request for sanctions for Respondent's failure to timely respond to the arbitrator's prior Order. After deliberation, the arbitrators directed Respondent to immediately comply with the panel's prior Order. The panel took under advisement the issue of sanctions, but stated that, at the very least, it would institute an NASD disciplinary referral if Respondent failed to comply with its Order.

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 NASD Regulation, Inc. Office of Dispute Resolution.

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, Norcross Securities, Inc., a/k/a Norcross & Company is liable for, and shall pay to the Claimant, Jonathan Orban, the sum of \$59,220.00 principal plus interest at the rate of 10% per annum from November 24, 1995, until paid.
2. Respondent, Norcross Securities, Inc., a/k/a Norcross & Company is liable for, and shall pay to the Claimant, Jonathan Orban, the sum of \$18,000.00 as an award of attorneys' fees.
3. Unless specifically set forth herein, each party shall bear its own costs and fees associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session. There were two (2) sessions x \$600 = \$1,200 in forum fees. Pursuant to §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 §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500 and shall refund the hearing session deposit in the amount of \$600 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to §10333 of the Code, Respondent, Norcross Securities, Inc., a/k/a Norcross & Company, is liable for, and shall pay to NASD Regulation, Inc. Office of Dispute Resolution the non-refundable member surcharge in the amount of \$300.00.

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Forum fees in the amount of \$1,200.00 are assessed by the arbitrators against Norcross Securities, Inc., a/k/a Norcross & Company.

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

Dated:

James E. Stark
James E. Stark
Industry Arbitrator, Presiding Chair

/s/

September 30, 1997

F. Pendleton Gaines, III
F. Pendleton Gaines, III
Industry Arbitrator

/s/

September 17, 1997

Maureen Beyers
Maureen Beyers
Industry Arbitrator

/s/

September 16, 1997