

NASD AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

The Boston Group, L.P.

97-00030

Name of Respondent

Patrick Joseph Carroll

REPRESENTATION

Claimant The Boston Group, L.P. ("Claimant") was represented by Richard P. Ryder, Esq., Maplewood, NJ.

Respondent Patrick Joseph Carroll ("Respondent") represented himself.

CASE INFORMATION

Statement of Claim filed: January 2, 1997.

Claimant's Submission Agreement signed on: December 23, 1996.

Statement of Answer and Counterclaim filed by Respondent on: March 11, 1997.

Respondent's Submission Agreement signed on: March 11, 1997.

HEARING INFORMATION

Pre-Hearing Dates/Sessions: July 14, 1997 - one session with the Panel
March 17, 1998 - one session with the Panel

Hearing Date/Sessions: May 5, 1998 - two sessions

Hearing Location: NASD Regulation, Office of Dispute Resolution, New York, NY

CASE SUMMARY

Claimant alleged that, commencing on or about August 21, 1995, Respondent was employed by it as an Account Executive. Claimant alleged that, on or about August 22, 1995, it loaned Respondent \$5000 in return for which Respondent signed a letter agreeing to repay the \$5000 loan upon demand. Claimant alleged that, on or about September 15, 1995, it loaned Respondent an additional \$5000 in return for which Respondent signed a Promissory Note in which he promised to repay the loan upon the occurrence of certain events, among which was his termination of employment with Claimant. Claimant alleged that Respondent also acknowledged the pre-existing loan of \$5000 in this Note. Claimant alleged that, on or about October 16, 1995, it loaned Respondent a third sum of \$5000 in return for which Respondent signed a Promissory Note in which he promised to repay the loan upon the occurrence of certain events, among which was his termination of employment with Claimant. Claimant alleged that Respondent also

acknowledged the pre-existing loans of \$10,000 in this Note, indicating that, as of October 16, he owed Claimant a total of \$14,137.44. Claimant alleged that, on or about March 6, 1996, Respondent's employment with Claimant terminated. Claimant alleged that, following that termination, a tally was taken of Respondent's remaining debt to Claimant and the amount owing was determined to be \$12,812.23. Claimant alleged that, on or about March 7, 1996, Janeann B. Knapp, Claimant's Director of Compliance, wrote Respondent making demand for payment in the sum of \$12,812.23 and advising Respondent that failure to repay the amount owed would require further collection efforts. Claimant alleged that despite that demand for payment and others which have followed, Respondent has paid Claimant no part of the principal amount due and owing.

Respondent denied all allegations of wrongdoing asserted in Claimant's claim. Respondent maintained that no controversy or dispute had arisen from any agreement made between Respondent and Claimant. Respondent alleged that Claimant had breached their contract with Respondent. Respondent alleged that Claimant had submitted a false claim to the NASD. Respondent maintained that any and all debt and subsequent obligations that he had with Claimant had been forgiven by Joseph Donahue, who had represented himself as a partner of the firm. Respondent maintained that the money that Claimant is trying to recover from him was actually a signing bonus structured in the form of a forgivable promissory note so as to appease Claimant's compliance director. Respondent alleged defamation of character by Claimant which resulted in his termination from a subsequent employer. Respondent alleged that Claimant's malicious and capricious acts have caused him personal hardship, mental anguish, and pain and suffering. Respondent alleged that Claimant had retained all commissions generated by him for all pay periods of his employment. Respondent alleged that a conversion of assets had occurred, on behalf of Claimant, with respect to Respondent's personal assets and possessions. Respondent alleged that Claimant had failed to disclose that it had illegally obtained and retained account information, personal research, marketing materials, etc. from Respondent. Respondent alleged that Claimant defamed him and made false allegations to others regarding Respondent's employment and personal character. Respondent maintained that his original agreement with Claimant had called for a total signing bonus of \$20,000, payable over four months, and that even though he never received the final payment, he did not sue Claimant for non-performance of a contractual agreement. Respondent maintained that Claimant had forgiven the notes in exchange for Respondent not calling the police and pressing charges against it for conversion of assets. Respondent maintained that he was never forewarned of any outstanding debit balance upon his resignation. Respondent maintained that he had never received nor was ever advised of any claim for money which he supposedly owed Claimant. Respondent alleged that he is actually due in excess of \$31,000 from Claimant for its theft of his personal property from his credenza while he was out of the office. Respondent alleged that Donahue, a principal of Claimant, had admitted to breaking into Respondent's cabinet and it was agreed that Respondent would be the beneficiary of all accounts recovered from terminating or resigning brokers as compensation for the theft. Respondent alleged that when this last promise was broken, he and his staff resigned. Respondent also alleged conversion of assets, misrepresentation, and fraud. Respondent alleged RICO violations due to a pattern by Claimant to defraud those in its employ. Respondent also alleged that he is owed compensation for blatant defamation of character and libelous statements to third parties while he was employed at other firms.

RELIEF REQUESTED

Claimant requested compensatory damages of \$12,812.23, representing the full amount owed from Respondent. Claimant requested attorney's fees as provided in the Promissory Notes, in an amount equal to one-third of all amounts awarded. Claimant requested pre-Award interest from the date the debt arose through the date of the Award. Claimant requested post-Award interest until the sums awarded are paid by Respondent. Claimant requested an assessment of forum fees and other costs against Respondent.

Respondent requested dismissal of the Statement of Claim and compensatory damages from Claimant for the value of the stolen property.

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 NASD Regulation.

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. That Claimant The Boston Group, L.P.'s claim is denied in its entirety.
2. That Respondent Patrick Joseph Carroll's counterclaim is denied in its entirety.
3. That the parties shall bear their own costs and attorney's fees, except as Other Costs and Forum Fees are addressed herein.
4. That any and all relief not specifically addressed above is denied in its entirety.

OTHER COSTS

Pursuant to Rule 10332(a) of the Code of Arbitration Procedure, Respondent Patrick Joseph Carroll shall pay to NASD Regulation, Inc. the \$500.00 counterclaim filing fee previously invoiced.

Pursuant to Rule 10333 of the Code, Claimant The Boston Group, L.P. has paid to NASD Regulation, Inc. the \$200.00 member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

$(2 \text{ pre-hearing sessions with the Panel} \times \$600) + (2 \text{ hearing sessions} \times \$600) = \$2400$ minus Claimant's hearing session deposit of \$300 = \$2100 balance due to NASD Regulation, Inc.

Claimant The Boston Group, L.P. is assessed forum fees of \$1200. Claimant The Boston Group, L.P. is entitled to offset this amount with its hearing session deposit of \$300. Claimant The Boston Group, L.P. shall pay to NASD Regulation, Inc. \$900.00.

Respondent Patrick Joseph Carroll is assessed forum fees of \$1200.00.

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

DATE SIGNED

Concurring Arbitrators' Signatures

I, Michel J. Landron, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

6/18/98


Michel J. Landron, Esq., Chairperson
Public Arbitrator

I, Berthold H. Hoeniger, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

Berthold H. Hoeniger, Esq., Panelist
Public Arbitrator

I, Carolyn Condo, do hereby affirm, pursuant to
article 7507 of the Civil Practice Law & Rules,
that I am the individual described herein and
who executed this instrument which is my Award.

Carolyn Condo, Panelist
Industry Arbitrator

Date Award Served by NASD Regulation:

June 22, 1998

I, Michel J. Landron, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

Michel J. Landron, Esq., Chairperson
Public Arbitrator

I, Berthold H. Hoeniger, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

June 18, 1998

Berthold H. Hoeniger
Berthold H. Hoeniger, Esq., Panelist
Public Arbitrator

I, Carolyn Condo, do hereby affirm, pursuant to
article 7507 of the Civil Practice Law & Rules,
that I am the individual described herein and
who executed this instrument which is my Award.

Carolyn Condo, Panelist
Industry Arbitrator

Date Award Served by NASD Regulation:

June 22, 1998

I, Michel J. Landron, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

Michel J. Landron, Esq., Chairperson
Public Arbitrator

I, Berthold H. Hoeniger, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

Berthold H. Hoeniger, Esq., Panelist
Public Arbitrator

I, Carolyn Condo, do hereby affirm, pursuant to
article 7507 of the Civil Practice Law & Rules,
that I am the individual described herein and
who executed this instrument which is my Award.

Carolyn Condo

Carolyn Condo, Panelist
Industry Arbitrator

06/17/98
Date Award Served by NASD Regulation: *June 22, 1998*