

## N.A.S.D. REGULATION, INC. AWARD

## NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration BetweenName of Claimant

Sterne, Agee &amp; Leach, Inc.

98-00254

Name of Respondent

Joseph Gray Morrison

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REPRESENTATION

For Claimant: G. Wayne Hillis, Jr., Esq. of the law firm of Parker, Hudson, Rainer & Dobbs, LLP, Atlanta, Georgia.

For Respondent: James P. O'Neal, Esq. of the law firm of Barnett, Hanes, O'Neal, Duffee & Garfield, L.L.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed: January 20, 1998.

Claimant's Submission Agreement signed on: January 15, 1998.

Statement of Answer filed by Respondent on: March 16, 1998.

Respondent's Submission Agreement signed on: March 12, 1998.

HEARING INFORMATION

A pre-hearing conference was conducted with the arbitration panel on June 15, 1998. Three hearing sessions were conducted in this matter in Atlanta, Georgia on August 24, 1998.

CASE SUMMARY

Claimant alleged the following: On or about December 13, 1996, Claimant Stern, Agee & Leach, Inc. ("Sterne, Agee") and Respondent Joseph Gray Morrison, an employee of Sterne, Agee, entered into a Loan Agreement in which Sterne, Agee agreed to loan Morrison \$100,000.00. The Loan Agreement provided:

For good and valuable consideration, Sterne, Agee & Leach, Inc. (Sterne Agee) agrees to loan Gray Morrison (Morrison) one hundred

thousand and 00/100 dollars (\$100,000.00). Sterne Agee will forgive this loan at \$0 for the initial twelve months, then in the amount of two thousand eighty-three and 33/100 dollars (\$2,083.33) per month until the entire balance is forgiven, as long as Morrison remains an employee in good standing. Should Morrison voluntarily terminate his employment with Sterne Agee, the remaining unamortized balance will be due and payable and will accrue interest from the termination date until paid at the AmSouth Bank, N.A. prime rate.

Sterne, Agee delivered the loan proceeds to Morrison on December 13, 1996.

Morrison voluntarily terminated his employment with Sterne, Agee on October 31, 1997, less than one year after the date of the Loan Agreement. Under the terms of the Loan Agreement, Morrison was obligated to pay Sterne Agee \$100,000.00, the entire unamortized balance due on the loan, plus interest accruing from October 31, 1997 until payment in full. By failing and refusing to repay the loan, Morrison breached the Loan Agreement. Alternatively, Morrison has been unjustly enriched in the amount of the loan plus interest. Therefore, Sterne, Agee is entitled to recover from Morrison the sum of \$92,681.86, the amount due after applying commissions that Morrison otherwise would have been entitled to receive at the time he terminated his employment, plus interest accruing on the unpaid principal balance of the loan from October 31, 1997 until full payment.

Sterne, Agee denied that it constructively discharged Morrison and denied that Morrison has any defense to Sterne, Agee's claims based on an alleged constructive discharge. Since Morrison was an employee at will, he cannot assert any legal claim or defense based on an alleged constructive discharge. In addition, Sterne, Agee denied that it promised Morrison stock options or that Sterne, Agee breached any promise to Morrison.

Respondent asserted the following: He was employed by Claimant, Sterne, Agee. Morrison's employment was terminated in November, 1997. Sterne, Agee has attempted to enforce a Loan Agreement claiming a balance due of \$92,691.86 plus interest, fees and costs. Morrison alleged that his termination was not "voluntary" as required in the Loan Agreement and, therefore, the balance on the Loan Agreement is not due. Morrison alleged that he is due a refund of \$7,314.00 plus interest, which amount was deducted from his commission revenue and applied to the balance on the Loan Agreement. Additionally, Morrison claimed that he is due options to purchase one thousand shares of Sterne, Agee common stock at December 1996 book value, said options to expire five years from the date of grant which would be the date of the arbitration award in the instant proceeding.

#### RELIEF REQUESTED

Claimant requested the following relief: the sum of \$92,681.86, the principal amount due under the Loan Agreement; interest accruing on the outstanding principal balance from October 31, 1997, until full payment is made at the AmSouth Bank, N.A. prime rate; the costs and attorneys' fees incurred by Claimant in this proceeding, including all NASD forum, hearing and other fees; and, any other relief to which Claimant is entitled or that the arbitration panel deemed appropriate.

Respondent requested a dismissal of all claims.

**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(s) remain on file with NASD Regulation, Inc.

**AWARD**

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

The Respondent is liable and shall pay to the Claimant the sum of \$85,000.00, post-judgment interest to be awarded pursuant to Rule 10330(h) of the Code of Arbitration Procedure.

Each party shall bear their respective costs including attorneys' fees.

**OTHER FEES**

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Claimant has paid to NASD Regulation, Inc. the \$1,000.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Claimant has paid to NASD Regulation, Inc. the \$600.00 pre-hearing process fee and the \$1,500.00 hearing process fee previously invoiced.

Pursuant to Rule 10205 of the Code of Arbitration Procedure, Claimant has paid to NASD Regulation, Inc. the \$500.00 claim filing fee previously invoiced.

**FORUM FEES**

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, forum fees in the sum of \$2,400.00 (one pre-hearing conference-panel plus three sessions x \$600.00) are assessed as follows:

Claimant is assessed the sum of \$1,200.00 less the \$600.00 on deposit in partial satisfaction thereof leaving a balance due in the sum of \$600.00.

Respondent is assessed the sum of \$1,200.00.

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

## Concurring Arbitrators' Signatures

Name

Public/Industry

/S/

Industry

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Scott M. Ratchick, Esq.

This arbitrator concurs with the decision  
awarding damages in favor of the Claimant but  
respectfully dissents from the amount awarded  
by the majority of the arbitration panel.

Mr.Ratchick would have awarded the Claimant  
\$97,180.22.

/S/

Industry

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M. Bruce Adelberg

/S/

Industry

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Joy L. Aldridge, Esq.

Date of Decision: September 30, 1998