

**AWARD**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Sutro & Co., Incorporated

and

99-01855  
Phoenix, Arizona

Name of Respondent

Allyne Riese Kendall, III

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**REPRESENTATION OF PARTIES**

Sutro & Co., Incorporated ("**Claimant**") was represented by David H.S. Commins, Esq., San Francisco, California.

Allyne Riese Kendall, III ("**Respondent**") prior to the hearing, was represented by Ronald W. Meyer, Esq., Phoenix, Arizona. On June 1, 2000, Mr. Meyer advised that he has withdrawn as Mr. Kendall's attorney.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 12, 1999. Sutro's Reply to Counterclaim and Motion for More Definite Statement was filed on or about July 12, 1999. Sutro's Statement of Answer to Allyne Kendall's Counterclaim was filed on or about January 13, 2000. Submission Agreement of Claimant Sutro & Co., Incorporated was signed on April 9, 1999 by Abe Lampart.

Answer of Allyne R. Kendall to Statement of Claim of Sutro & Co., Incorporated and Claim of Allyne R. Kendall was filed on or about June 18, 1999. Submission Agreement of Respondent Allyne Riese Kendall, III was signed on June 17, 1999.

**CASE SUMMARY**

Claimant alleged that Respondent is in breach of contract. Specifically, Claimant alleged that between June 1996 and December 1997, it loaned Respondent nearly \$70,000, in exchange for which Respondent signed four promissory notes. Pursuant to the terms of the promissory notes, the full unpaid balances became due and payable upon Respondent's termination of employment.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that the employment contract was an employment for a term and could only be terminated for

cause. It was also stated by Respondent that he was unlawfully terminated. In addition, Respondent stated that the balances on two of the promissory notes are not owed because they were for monies already earned and if he had not been terminated without cause, the terms of the Notes would have been fulfilled without any payment. It was further stated that the balance due on a third Note is not due because the amortization is incorrect. Respondent admits that there are monies due on the fourth Note; but is payable by monthly payments at the rate set forth in the Note.

In his Counterclaim, Respondent alleged that as part of his employment contract, he was entitled to purchase 6,000 shares at a specified rate; at the time of his termination he was entitled to an additional 2,424 shares; and that he was due commissions at a higher rate than he had been paid.

In its Reply to Counterclaim, Claimant denied that Respondent's employment agreement contained any terms concerning rights to obtain stock. In the Statement of Answer to Allyne Kendall's Counterclaim, Claimant stated that respondent was an at-will employee and that he was terminated for cause. Specifically, Claimant alleged that beginning in late 1995 or early 1996, Respondent was involved in a series of episodes with other employees that included agitated behavior, yelling profanity, outright sexual harassment, comments of a sexual nature related to fellow employees, attempting to reprimand his supervisor, and violent temper tantrums with and cursing at his sales assistants.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$46,209.94, the principal balance due on the notes, accumulated interest, attorneys' fees, and costs, including filing fees and member fees. Claimant also requested that the Counterclaim asserted in this matter be denied.

Respondent requested that the claims asserted against him be denied and that he be awarded compensatory damages in an amount not less than \$13,000 and unspecified damages at the proper payout of his commissions.

### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the post hearing submissions and the file the undersigned arbitrators have determined that Respondent Allyne Riese Kendall, III had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

### **AWARD**

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

1. Respondent Allyne Riess Kendall, III shall be and hereby is liable for and shall pay to the Claimant Sutro & Co., Incorporated the sum of \$46,218 (**Forty Six Thousand Two Hundred Eighteen Dollars**).
2. Interest at the rate of 8.5% per annum is awarded on the above stated sum from and inclusive of January 19, 1999 to and inclusive of the date this award is paid.
3. Respondent Allyne Riess Kendall, III shall be and hereby is liable for and shall pay to the Claimant Sutro & Co., Incorporated the sum of \$20,000 (**Twenty Thousand Dollars**) as attorneys' fees. The Arbitration Panel finds that it has authority to award attorneys' fees pursuant to the terms of the Notes at issue in this matter.
4. Respondent Allyne Riess Kendall, III shall be and hereby is liable for and shall pay to the Claimant Sutro & Co., Incorporated the sum of \$6,800 (**Six Thousand Eight Hundred Dollars**) as costs. The Arbitration Panel finds that it has authority to award costs pursuant to the terms of the Notes at issue in this matter.
5. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
6. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$1,000.00
Counter claim filing fee	= \$ 125.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is Sutro & Co., Incorporated.

Member surcharge	= \$1,500.00
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Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

**Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$750.00	= \$1,500.00
Pre-hearing conference(s): November 4, 1999	1 session
December 13, 1999	1 session
One (1) Hearing session x \$750.00	= \$ 750.00
Hearing Date(s): June 6, 2000	1 session
Total Forum Fees	= \$2,250.00

The Arbitration Panel has assessed \$1,125.00 of the forum fees to Sutro & Co., Incorporated.  
The Arbitration Panel has assessed \$1,125.00 of the forum fees to Allyne Riese Kendall, III.

**Fee Summary**

Claimant, Sutro & Co., Incorporated, shall be and hereby is liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$3,100.00
<u>Forum Fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$5,225.00
<u>Less payments</u>	<u>= \$3,350.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,875.00

Respondent, Allyne Riese Kendall, III, shall be and hereby is liable for:

Type Filing Fee	= \$ 125.00
<u>Forum Fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$1,250.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,250.00

**All balances are due to NASD Dispute Resolution, Inc.**

Dated:

/s/ Larry K. Wetterschneider

Larry K. Wetterschneider  
Public Arbitrator, Presiding Chair

February 8, 2001

/s/ Douglas E. McArthur

Douglas E. McArthur  
Public Arbitrator

February 9, 2001

/s/ Thomas P. Delnoce

Thomas P. Delnoce  
Industry Arbitrator

February 13, 2001

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PAGE 7

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PAGE 7

NASD Dispute Resolution, Inc.

Arbitration No. 99-01855

Award Page 5 of 5

All balances are due to NASD Dispute Resolution, Inc.

  
Larry K. Wetterschneider  
Public Arbitrator, Presiding Chair

  
Douglas E. McArthur  
Public Arbitrator

  
Thomas P. Delnoce  
Industry Arbitrator

Dated:

2/8/01

2/9/01

2/13/01