

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Dean Witter Reynolds Inc., (Claimant) vs. Anthony J. Lobello, (Respondent)

Case Number: 00-00087

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant Dean Witter Reynolds Inc., hereinafter referred to as "Claimant": Diane C. Fischer, Esq. and Ronald P. Kane, Esq., Kane & Fischer, Ltd., Chicago, IL.

Respondent Anthony J. Lobello, hereinafter referred to as "Respondent", appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: January 10, 2000.

Claimant signed the Uniform Submission Agreement: January 7, 2000.

Statement of Answer filed by Respondent on or about: March 9, 2000.

Respondent signed the Uniform Submission Agreement: March 9, 2000.

CASE SUMMARY

Claimant asserted the following cause of action: breach of promissory note.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Respondent made a good faith attempt to resolve this matter fairly prior to the filing of this arbitration; Respondent resigned because verbal representations and promises made by Claimant to Respondent during his recruitment and hiring were not fulfilled; certain practices and procedures at Claimant firm negatively influenced Respondent's existing business, new business development, and reputation; Respondent's affiliation with Claimant caused his business to suffer; and Respondent contends that he earned and deserves a substantial portion of the funds given to him by Claimant under the terms of the promissory note.

RELIEF REQUESTED

Claimant requested the following relief:

- A. The principle balance due and owing under the promissory note in the amount of \$50,130.00;
- B. Interest accrued during the term of the promissory note at the contract rate of 6%, totaling \$601.52;
- C. Interest on the balance due and owing under the promissory note from the date

of default (April 30, 1999) to January 10, 2000, at the contract rate of 6% per annum (\$8.24 per day), totaling \$2,101.20;

- D. Interest on the balance due and owing under the promissory note at \$8.24 per day from January 10, 2000 to date of payment;
- E. The costs of collection and the costs of this proceeding, including attorneys' fees, as agreed to under the terms of the promissory note; and
- F. Any and all further relief that the Panel deems just and proper.

Respondent requested a fair and equitable resolution to this matter.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearing in this matter, Respondent made a motion requesting that affidavits be accepted in lieu of the appearance of certain witnesses. The Panel reviewed the affidavits provided by Respondent, and ruled that they lacked relevance to any items in the Statement of Claim. The Panel determined not to enter said affidavits into evidence.

Subsequent to the hearings in this matter, Respondent submitted a Motion to Reopen the Record and Claimant submitted an Objection thereto. The arbitrators considered all submissions and, after due deliberation, determined to deny Respondent's Motion.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent be and hereby is liable for and shall pay compensatory damages to Claimant the sum of \$50,130.00.
2. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$5,405.44, representing interest for the period of April 30, 1999 through December 4, 2000.
3. Respondent be and hereby is liable for and shall pay to Claimant attorneys' fees in the amount of \$15,291.00. The Panel awarded attorneys' fees pursuant to the terms of the promissory note signed by Respondent.
4. Respondent be and hereby is liable for and shall pay to Claimant costs in the amount of \$821.78. The Panel awarded costs pursuant to the terms of the promissory note signed by Respondent.

5. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$1,000.00, to reimburse Claimant for the non-refundable filing fee previously paid to NASD Dispute Resolution, Inc.
6. All other requests for relief are hereby denied.

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
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Dean Witter Reynolds, Inc. is a party.

Member surcharge	= \$1,000.00	Member surcharge
Pre-hearing process fee	= \$ 600.00	Pre-hearing process fee
Hearing process fee	= \$1,500.00	Hearing process fee

Forum Fees and Assessments

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

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: October 10, 2000	1 session

One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conference: July 31, 2000	1 session

One (1) Post-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Post-hearing conference: January 4, 2001	1 session

Four (4) Hearing sessions x \$750.00	= \$3,000.00
Hearing Dates: December 4, 2000	2 sessions
December 5, 2000	2 sessions

Total Forum Fees	= \$4,650.00
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The Panel has assessed all of the forum fees against Respondent.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$1,000.00
<u>Member Fees</u>	<u>= \$3,100.00</u>
Total Fees	= \$4,100.00
<u>Less payments</u>	<u>= \$4,850.00</u>
Refund Due Claimant	= \$ 750.00

As stated in the "Award" section above, Respondent is liable and shall reimburse Claimant for the \$1,000.00 filing fee.

2. Respondent be and hereby is solely liable for:

Forum Fees	= \$4,650.00
Total Fees	= \$4,650.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$4,650.00

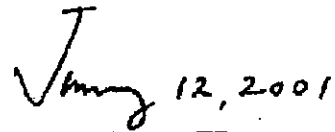
All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



James R. Madan
Industry Arbitrator, Presiding Chair



Signature Date

Ivan W. Harper, CPA
Industry Arbitrator

Signature Date

Jean C. Black
Industry Arbitrator

Signature Date

January 16, 2001
Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

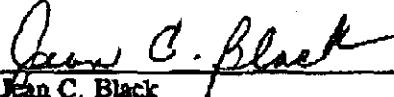
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Signature Date

Ivan W. Harper, CPA
Industry Arbitrator

Signature Date



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Industry Arbitrator

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January 16, 2001
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