

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Raymond J. Spasiano, (Claimant) vs. 1717 Capital Management Company, (Respondent)

Case Number: 00-00357

Hearing Site: Buffalo, New York

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**REPRESENTATION OF PARTIES**

Claimant, Raymond J. Spasiano, hereinafter referred to as "Claimant": Donald G. McGrath, Esq., Falk & Siemer, LLP, Buffalo, NY.

Respondent, 1717 Capital Management Company, hereinafter referred to as "Respondent": Elizabeth Hoop Fay, Esq., Morgan, Lewis & Bockius LLP, Philadelphia, PA.

**CASE INFORMATION**

Statement of Claim filed on or about: January 26, 2000.

Claimant signed the Uniform Submission Agreement: January 20, 2000.

Statement of Answer filed by Respondent on or about: March 16, 2000.

Respondent signed the Uniform Submission Agreement: March 15, 2000.

**CASE SUMMARY**

Claimant asserted the following causes of action: false and derogatory information filed on Claimant's Form U-5 and defamation.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: the statements contained in the Form U-5 are true; the statements contained in the Form U-5 are privileged; any alleged defamatory communications are protected by the First Amendment of the Constitution of the United States; and Claimant has failed to plead any facts that would entitle him to an order of expungement or to compensatory damages, punitive damages, or attorneys' fees against Respondent.

**RELIEF REQUESTED**

Claimant requested:

- a. An order of expungement;
- b. Damages for lost earnings from September 1999 forward at a rate of no less than \$14,335.00 per month, plus interest;
- c. Damages for harm to his reputation within the community of at least \$1,000,000.00; and
- d. Punitive damages of at least three times actual damages, plus costs and disbursements.

Respondent requested that Claimant's claims be dismissed in their entirety, that all forum fees be assessed against Claimant, and that Respondent be awarded attorneys' fees.

**OTHER ISSUES CONSIDERED AND 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.

**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. The Panel orders that the Form U-5 filed by Respondent against Claimant on October 15, 1999 shall be expunged. This expungement order is based on the defamatory nature of the information in the CRD system.
2. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$306,700.00 as compensatory damages, plus interest at the rate of 5.18% accruing from the date of this Award until paid.
3. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$500.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution, Inc.
4. Each party shall bear its own legal fees.
5. 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	= \$ 500.00
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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, 1717 Capital Management Company is a party.

Member surcharge	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

#### **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:

Two (2) Pre-hearing sessions with Panel x \$1,200.00	= \$ 2,400.00
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Pre-hearing conferences:	July 11, 2000	1 session
	July 20, 2000	1 session

Sixteen (16) Hearing sessions x \$1,200.00	= \$19,200.00
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Hearing Dates:	October 5, 2000	2 sessions
	October 6, 2000	2 sessions
	October 19, 2000	2 sessions
	October 20, 2000	2 sessions
	November 15, 2000	2 sessions
	November 16, 2000	2 sessions
	January 25, 2001	2 sessions
	January 26, 2001	2 sessions

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Total Forum Fees	= \$21,600.00
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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:

<u>Initial Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 4,200.00
Refund Due Claimant	= \$ 3,700.00

*As stated in the "Award" section above, Respondent is liable and shall reimburse Claimant for the \$500.00 filing fee.*


2. Respondent be and hereby is solely liable for:

Member Fees	= \$ 7,600.00
<u>Forum Fees</u>	= \$21,600.00
<u>Total Fees</u>	= \$29,200.00
<u>Less payments</u>	= \$ 7,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$21,600.00

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.

  
\_\_\_\_\_  
Werner Schenk  
Public Arbitrator, Presiding Chair

March 12, 2001  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Alun Hywel Jones  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Robert Shiffra, Esq.  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

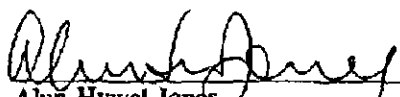
March 15, 2001  
\_\_\_\_\_  
Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.  
Arbitration No. 00-00357  
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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.

\_\_\_\_\_  
William Schenk  
Public Arbitrator, Presiding Chair

  
Alun Hywel Jones  
Public Arbitrator

\_\_\_\_\_  
Signature Date

March 12, 2001  
Signature Date

\_\_\_\_\_  
Robert Shiffra, Esq.  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

March 15, 2001  
Date of Service (For NASD office use only)

FROM

TO

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**Concurring Arbitrators' Signatures**

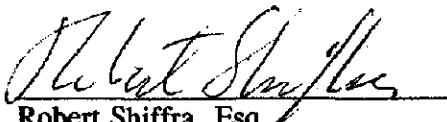
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\_\_\_\_\_  
Werner Schenk  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Alun Hywel Jones  
Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Robert Shiffra, Esq.  
Industry Arbitrator

3-19-01  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
March 26, 2001  
Date of Service (For NASD office use only)