

**Stipulated Award**  
**NASD Dispute Resolution**

In the Matter of Arbitration Between:

Joseph J. Haburjak and David W. Haburjak, Claimants, v. Linsco/Private Ledger Corp.,  
Respondent.

Case Number: 00-05533

**REPRESENTATION OF PARTIES**

For Claimants:

Gregory Bartko, Esq.  
Law Offices of Gregory Bartko  
3475 Lenox Road, Suite 400  
Atlanta, GA 30326

For Respondent:

David J. Freniere, Esq.  
Amanda M. Candelmo, Esq.  
*Linsco/Private Ledger Corp.*  
155 Federal Street, 15<sup>th</sup> Floor  
Boston, MA 02110

**CASE INFORMATION**

Statement of Claim filed: December 12, 2000

Claimants' Uniform Submission Agreement signed: December 11, 2000

Statement of Answer filed by Respondent: March 2, 2001

Respondent's Uniform Submission Agreement signed: March 2, 2001

Claimants' Amended Statement of Claim filed: August 31, 2001

Respondent's Answer to Amended Statement of Claim filed: October 3, 2001

**CASE SUMMARY**

In their Statement of Claim, Claimants alleged that Respondent, Linsco/Private Ledger Corp. (Linsco) mishandled customer accounts while Claimants were associated and registered with Respondent, that Respondent wrongfully seized assets owned by the Respondents during the course of Respondent's internal review of Claimants' activities in connection with two customers' accounts, and that Respondent failed to pay valid checks drawn by Claimants against their own accounts with Respondent. Claimants also alleged that Respondent breached its contractual obligation and fiduciary duty to timely and properly submit customer losses arising from alleged wrongful acts committed by the Claimants to their errors and omissions insurance carrier. Last, Claimants alleged Respondent, Linsco was liable to them for allegedly filing a false and inaccurate U-5

form with the NASD concerning the nature of the termination of David W. Haburjak as a registered representative of Respondent, Linsco.

Respondent denied each and every claim alleged by the Claimants.

### **RELIEF REQUESTED**

Claimants requested: Compensatory damages of \$1,011,454, costs, and attorneys' fees. Claimants also requested the Panel to issue an Order permitting Respondent, Linsco to file an amendment to the Form U-5 filed on behalf of David W. Haburjak with a disclosure of "Voluntary" as the reason for his termination.

Respondent requested dismissal of all claims and causes of action in the Claimants' Statement of Claim and Amended Statement of Claim in their entirety.

### **VOLUNTARY DISMISSAL**

The parties have now resolved the differences between them and have stipulated to the following award. In October 2001, Claimants agreed to voluntarily dismiss their claim concerning the alleged false and inaccurate filing of Claimant, David Haburjak's Form U-5. In resolving this claim, Claimants and Respondent stipulated to an Award in which this Panel would 1) direct the expungement of the May 2001 Form U-5 CRD filing for Claimant, David Haburjak, identifying the Reason for Termination (Question 13 of Form U-5) as "Permitted to Resign," and 2) allow Respondent, Linsco, to file a restated Form U-5 for Claimant, David Haburjak, identifying the Reason for Termination (Question 13 of Form U-5) as "Voluntary." The Claimants further agreed to voluntarily dismiss all remaining claims against Respondent.

The parties request this Panel to Order the expungement of the May 2001 disclosure in Question 13 of Claimant, David W. Haburjak's Form U-5 with respect to the "Reason for Termination" as "Permitted to Resign," and to Order and enable Respondent, Linsco, to file a restated Form U-5 response to Question 13, designating the "Reason for Termination" as "Voluntary," based on the allegation that this language could be potentially defamatory and misleading. This request is based on the Claimants' allegation that this disclosure language is defamatory and misleading, and could also cause employment problems, all of which were unintended outcomes of that disclosure. Respondent, Linsco, enters into this Stipulation without any admission of liability or wrongdoing.

Based on the above, Respondent, Linsco, along with the Claimants, request the Panel to Order the NASD to expunge the disclosure of "Permitted to Resign" and to enable Respondent, Linsco, to restate the "Reason for Termination" as "Voluntary," in order to correct any allegedly defamatory construction of that disclosure, to correct any potentially misleading construction of that language, and to assist in curing any potential employment problems which could result from that language. Please note that the NASD does not enable a broker/dealer to amend or restate the designation in Question 13 of

Form U-5, but instead, requires an express Order issued by a Panel or a court of competent jurisdiction.

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**

Pursuant to the stipulation reached by the parties, the panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Based on the allegedly defamatory nature of the information presently in the CRD system, this Panel Orders the NASD to expunge the Response to Question 13, "Reason for Termination" as "Permitted to Resign," as set forth in Respondent, Linsco's May 2001 filing of David Haburjak's Form U-5, from Mr. Haburjak's registration records maintained by NASD Central Registration Depository ("CRD"). The panel further Orders the NASD to allow Respondent, Linsco, to file a restated Form U-5 for Mr. Haburjak, designating the "Reason for Termination," in Question 13 as "Voluntary."
2. The parties agree that each party will bear its own costs and fees.
3. All other relief not expressly granted is denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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, the member firm is a party.

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

#### **Adjournment Fees**

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings. Due to the extenuating circumstances of September 11, 2001 and its impact upon the parties, the Panel adjourned the evidentiary hearing scheduled for September 20 and 21, 2001 without the assessment of an adjournment fee to the parties.

#### **Forum Fees and Assessments**

The Panel has the authority to assess 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
Pre-hearing conferences: June 21, 2001 1 session	
September 20, 2001 1 session	
<hr/> Total Forum Fees	<hr/> = \$2,400.00

Pursuant to the agreement of the parties, the Panel has assessed \$1,200.00 of the forum fees jointly and severally to Claimants and \$1,200.00 of the forum fees to Respondent.

#### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

#### **FEE SUMMARY**

Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 1,200.00
<hr/> Total Fees	<hr/> = \$ 1,700.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

Respondent be and hereby is solely liable for:

Member Fees	= \$7,600.00
Forum Fees	= \$1,200.00
<hr/> Total Fees	<hr/> = \$8,800.00
Less payments	= \$7,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,200.00

All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Larry Ray Green, JD  
Charles W. Hill, Esq.  
John F. Adcock

Public Arbitrator – Presiding Chairman  
Non-Public Arbitrator  
Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Larry Ray Green, JD  
Chairman, Public Arbitrator

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

\_\_\_\_\_/s/\_\_\_\_\_  
Charles W. Hill, Esq.  
Non-Public Arbitrator

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

\_\_\_\_\_/s/\_\_\_\_\_  
John F. Adcock  
Public Arbitrator

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

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January 8, 2002  
(Date of Service)

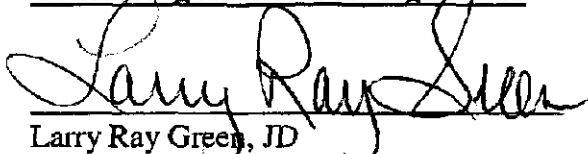
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Larry Ray Green, JD  
Chairman, Public Arbitrator

12/31/01  
Signature Date

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Charles W. Hill, Esq.  
Non-Public Arbitrator

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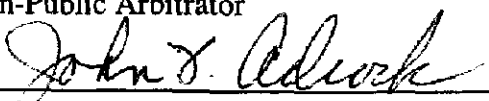
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