

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

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In the Matter of the Arbitration Between:

Name of the Claimant/Counter-Respondent  
Salomon Grey Financial Corp.

Case Number: 02-06701

Name of the Respondent/Counter-Claimant  
Patrick F. Harte, Jr.

Hearing Site: Dallas, Texas

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**REPRESENTATION OF PARTIES**

Claimant/Counter-Respondent Salomon Grey Financial Corp., hereinafter referred to as "Salomon": Belinda Goss, Esq. of Salomon Grey Financial Corp., located in Dallas, Texas.

Respondent/Counter-Claimant Patrick F. Harte, Jr., hereinafter referred to as "Harte": Wm. David Simmons, Esq., of the firm of McGuire, Craddock & Strother, P.C., located in Dallas, Texas.

**CASE INFORMATION**

Statement of Claim filed: November 6, 2002.

Salomon signed the Uniform Submission Agreement: November 1, 2002.

Statement of Answer and Counterclaim filed by Harte on: January 22, 2003.

Harte signed the Uniform Submission Agreement: January 10, 2003.

Salomon's Answer to the Counterclaim filed on or about: February 13, 2003

**CASE SUMMARY**

Salomon asserted the following causes of action: unjust enrichment and breach of contract. These claims were based upon Harte receiving commissions and a draw in excess of the amount contracted between the parties as part of Harte's employment with Salomon. In response to a Salomon memo advising Harte of the mistake, he resigned owing Salomon the sum of \$37,865.71 in overpayment of salary and trading losses.

Unless specifically admitted in its Answer, Harte denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The claims are barred by the doctrines of waiver, estoppel and ratification;
2. Salomon's claims are inconsistent with FICA and OASDI returns filed by Salomon; and,

3. Salomon's claim for trading losses is not consistent with his employment agreement and, accordingly, he should recover his attorneys' fees incurred in enforcing his employment agreement.

In his Counterclaim, Harte alleged that Salomon wrongfully forced Harte to reimburse Salomon for expenses it incurred in defending itself in a litigation claim. In addition, Harte alleged that Salomon withheld part of the final compensation due him. Furthermore, Harte asserted that his reputation had been injured by the publication of the Form U-5 Uniform Termination Notice. Because of the injury to his reputation, Harte requested punitive damages.

In its response to the Counterclaim, Salomon denied any liability under the Counterclaim, claiming that Harte was discharged and on the Form U-5, Salomon is required to provide the circumstances of the termination. In addition, Harte had orally agreed he would be responsible for legal expenses incurred by Salomon with certain customers he brought to the firm who were engaged in trading of "bulletin board" stocks.

#### **RELIEF REQUESTED**

Solomon requested:

Compensatory Damages (unearned compensation)	\$ 24,000.00
Compensatory Damages (trading losses)	\$ 13,865.71
Interest	Pre- and post interest
Other Monetary/Non-Monetary Relief if any:	All NASD filing fees.

In addition, Solomon requested that Harte's Counterclaim be dismissed.

Harte requested that Salomon take nothing on its claim. In addition, Harte requested the following damages on his Counterclaim:

Compensatory Damages	\$ 15,315.32
Punitive Damages	Determined by panel
Other Monetary/Non-Monetary Relief if any:	An order requiring Salomon to issue a corrected Form U-5.

#### **AWARD**

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

1. Claimant/Counter-Respondent Salomon Grey Financial Corp. is liable for and shall pay to Respondent/Counter-Claimant Patrick F. Harte, Jr. the sum of \$4,770.70 as compensatory damages;
2. The claim filed by Claimant/Counter-Respondent Salomon Grey Financial Corp. is dismissed and denied in its entirety;
3. The parties shall bear their own costs of arbitration, including any attorneys' fees,

- except for those sums specifically enumerated herein; and
4. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution 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. Accordingly, Salomon Grey Financial Corp. is a party and the following member fees are assessed:

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed: None.

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

The Arbitrator has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: April 9, 2003 1 session	
Two (2) Hearing sessions @ \$450.00	= \$ 900.00
Hearing Date: August 12, 2003 2 sessions	
Total Forum Fees	= \$1,350.00

The Arbitrator has assessed \$675.00 of the forum fees to Claimant/Counter-Respondent Salomon Grey Financial Corp. and \$675.00 of the forum fees to Respondent/Counter-Claimant Patrick F. Harte, Jr.

### **SEE SUMMARY**

Claimant/Counter-Respondent Salomon Grey Financial Corp. is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 2,625.00
<u>Forum Fees</u>	= \$ 675.00
Total Fees	= \$ 4,300.00
<u>Less payments</u>	= \$ 4,775.00
Balance Refunded by NASD Dispute Resolution	= \$ 475.00

Respondent/Counter-Claimant Patrick F. Harte, Jr. is solely liable for:

Filing Fee	= \$ 125.00
<u>Forum Fees</u>	= \$ 675.00
Total Fees	= \$ 800.00
<u>Less payments</u>	= \$ 575.00
Balance Due NASD Dispute Resolution	= \$ 225.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**


Sanford D. Sanes - Public Arbitrator, Presiding Chairperson

**Concurring Arbitrator's Signature**



Sanford D. Sanes  
Public Arbitrator, Presiding Chairperson

8-27-03  
Signature Date

8/28/03   
Date of Service (For NASD Dispute Resolution office use only)