

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Moshe Heber (Claimant) v. HSBC Brokerage USA and Raymond Esposito
(Respondents)

Case Number: 03-00145

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Claimant Moshe Heber ("Heber") hereinafter referred to as "Claimant": Jeffrey Neiman, Esq., The Neiman Law Firm, Brooklyn, NY.

Respondents HSBC Brokerage USA ("HSBC") and Raymond Esposito ("Esposito") hereinafter collectively referred to as "Respondents": Paul K. Stecker, Esq., Phillips, Lytle, Hitchcock, Blaine & Huber, LLP, Buffalo, NY.

CASE INFORMATION

Statement of Claim filed on or about: January 7, 2003.

Claimant signed the Uniform Submission Agreement: December 15, 2002.

HSBC did not file a Statement of Answer or sign a Uniform Submission Agreement.

Esposito did not file a Statement of Answer or sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: wrongful termination as a result of religious discrimination.

RELIEF REQUESTED

Claimant requested damages in the amount of \$400,000.00 plus punitive damages in the amount of \$600,000.00 together with interest and the costs and disbursement of the proceeding.

OTHER ISSUES CONSIDERED AND DECIDED

By letters dated March 6, 2003, March 19, 2003, and March 31, 2003, Respondents notified NASD Dispute Resolution ("NASD DR") that since Claimant's claim was based on statutory discrimination, in accordance with Rule 10201(b) of the NASD Code of

Arbitration Procedure, Respondents are not required to arbitrate in this forum. By letters dated January 14, 2003, March 17, 2003, and March 27, 2003, Claimant contended that his sole claim was based on wrongful termination.

On February 2, 2004 the Panel held a telephonic deliberation conference to determine the arbitrability issue. The Panel concluded that under Rule 10201(b) of the NASD Code of Arbitration Procedure, Respondents are not required to arbitrate the claim that has been asserted against them in this proceeding. The Panel unanimously reached this decision because the claim that has been asserted is a statutory employment discrimination claim. Therefore, Claimant's claim is dismissed.

Respondents did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

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 Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claim is dismissed in its entirety.
2. 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	= \$375.00
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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, HSBC Brokerage USA is a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: July 9, 2003 1 session	
Total Forum Fees	= \$1,200.00

1. The Panel has assessed \$1,200.00 of the forum fees against Claimant.

Fee Summary

1. Claimant is solely liable for:	
Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$1,200.00
Total Fees	= \$1,575.00
<u>Less payments</u>	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$ 0.00
2. HSBC is solely liable for:	
<u>Member Fees</u>	= \$7,000.00
Total Fees	= \$7,000.00
<u>Less payments</u>	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

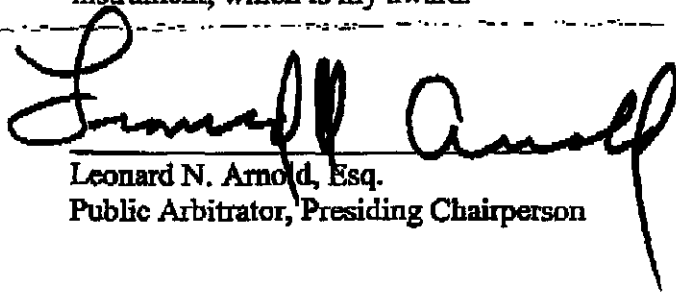
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Leonard N. Arnold, Esq.	-	Public Arbitrator, Presiding Chair
Michelle Jacobwitz Gallagher, Esq.	-	Public Arbitrator
Jerry P. DeNigris	-	Non-Public Arbitrator

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.


Leonard N. Arnold, Esq.
Public Arbitrator, Presiding Chairperson

3/2/04
Signature Date

Michelle Jacobwitz Gallagher, Esq.
Public Arbitrator

Signature Date

Jerry P. DeNigris
Non-Public Arbitrator

Signature Date

March 3, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Leonard N. Arnold, Esq.	-	Public Arbitrator, Presiding Chair
Michelle Jacobwitz Gallagher, Esq.	-	Public Arbitrator
Jerry P. DeNigris	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

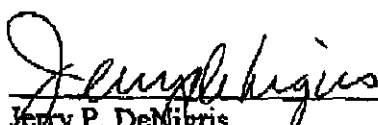
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Leonard N. Arnold, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Michelle Jacobwitz Gallagher, Esq.
Public Arbitrator

Signature Date



Jerry P. DeNigris
Non-Public Arbitrator



Signature Date

March 3, 2004

Date of Service (For NASD Dispute Resolution use only)