

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

J.J.B. Hilliard, W.L. Lyons, Inc.

and

04-03609  
Nashville, Tennessee

Name of Respondent

David Scott O'Block

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Nature of the Dispute: Member and Associated Person.

**REPRESENTATION OF PARTIES**

J.J.B. Hilliard, W.L. Lyons, Inc. ("**Claimant**") was represented by Matthew J. Morelli, Esq., Ulmer Berne LLP, Cleveland, Ohio.

David Scott O'Block ("**Respondent**") was represented by Pamela L. Reeves, Esq., Anderson, Reeves & Herbert, P.A., Knoxville, Tennessee.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 20, 2004. Motion to Exclude Evidence of Alleged Employment Discrimination was filed on or about March 14, 2005. Submission Agreement of Claimant J.J.B. Hilliard, W.L. Lyons, Inc. was signed on March 16, 2004.

Statement of Answer was filed by Respondent David Scott O'Block on or about August 18, 2004. Respondent David O'Block's Response to Claimant's Motion to Exclude Evidence of Employment Discrimination was filed on or about March 28, 2005.

**CASE SUMMARY**

Claimant asserted the following cause of action: breach of promissory note. The action was brought by Claimant to recover the balance due pursuant to a promissory note ("the Note") given to a former employee.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated as follows:

First, Hilliard asserted that I left owing them a loan is true to the extent that by terminating my employment Hilliard breached an implied covenant to not terminate me without cause during the 5 year period over which the note was being amortized, thereby depriving the mean's to repay the note.

Second, I was wrongfully terminated because of the demand of management to place my clients in unsuitable higher paying commission investments in order to keep my job during my last few weeks, thus I refused to engage in illegal activities and was fired immediately.

Third, during my entire employment I and many other colleagues were harassed both verbally and in a written material format via e-mail's and "kitchen material". I and others specifically demanded the behavior of this individual to stop. Instead of letting him go due to his position in the company i.e. level of production, Hilliard either fired me.

In conclusion, I maintain that I was fired because I was a "whistleblower" in a discriminating hostile work environment where the company does not reprimand the wrong doer's only fires or runs off the employees that demand this behavior to stop. More importantly, I was fired because I would not engage in illegal activities by making unsuitable high paying commission investment's for my client's at the demands of management, thus I was terminated immediately.

### **RELIEF REQUESTED**

Claimant requested an award against Respondent for the following: the principal balance due and owing under the Loan Agreement in the amount of \$120,000.00; pre and post judgment interest at the highest rate allowable under law; and costs of collection and of this proceeding, including attorneys' fees; and any other relief as the arbitrators deem just.

Respondent requested that the claims asserted against him be denied.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent David Scott O'Block did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

By letter dated April 15, 2005, the parties were advised of the Arbitration Panel's decision to deny the Motion to Exclude Evidence of Employment Discrimination.

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. In either case, the parties have agreed to receive

conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

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

1. Respondent David Scott O'Block is liable for and shall pay Claimant J.J.B. Hilliard, W.L. Lyons, Inc. the sum of \$80,000.00 (**Eighty Thousand Dollars and No Cents**) as compensatory damages.
2. Respondent David Scott O'Block is liable for and shall pay Claimant J.J.B. Hilliard, W.L. Lyons, Inc. the sum of \$11,459.25 (**Eleven Thousand Four Hundred Fifty Nine Dollars and Twenty Five Cents**) as interest.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

### **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

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is J.J.B. Hilliard, W.L. Lyons, Inc.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

Hearing Date(s), April 7 & 8, 2004 adjournment requested by Respondent David Scott O'Block (fee waived by Arbitration Panel) = \$1,125.00

### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

1 Pre-hearing session(s) with Panel	x	1,125.00	\$	1,125.00
October 29, 2004	1 session			
2 Hearing sessions	x	1,125.00	\$	2,250.00
July 18, 2005	2 sessions			
Total Forum Fees			\$	3,375.00

The Arbitration Panel has assessed \$1,687.50 of the forum fees to J.J.B. Hilliard, W.L. Lyons, Inc.  
The Arbitration Panel has assessed \$1,687.50 of the forum fees to David Scott O'Block.

### **Fee Summary**

Claimant, J.J.B. Hilliard, W.L. Lyons, Inc., shall be and hereby is liable for:

Initial Filing Fee	= \$	1,000.00
Member Fees	= \$	5,200.00
Forum Fees	= \$	1,687.50
Total Fees	= \$	7,887.50
Less payments	= \$	-7,325.00
Balance Due NASD Dispute Resolution	= \$	562.50

Respondent, David Scott O'Block, shall be and hereby is liable for:

<u>Forum Fees</u>	= \$	1,687.50
Total Fees	= \$	1,687.50
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	1,687.50

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

David T. Maddux – Non-Public Arbitrator, Presiding Chair  
R. Thomas Barksdale – Non-Public Arbitrator  
George Michael Cross - Non-Public Arbitrator

Concurring Arbitrators:

/s/ David T. Maddux  
David T. Maddux  
Non-Public Arbitrator, Presiding Chair

July 21, 2005  
Signature Date

/s/ R. Thomas Barksdale  
R. Thomas Barksdale  
Non-Public Arbitrator

July 21, 2005  
Signature Date

/s/ George Michael Cross  
George Michael Cross  
Non-Public Arbitrator

July 21, 2005  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 04-03609  
Award Page 5 of 5

Respondent, David Scott O'Block, shall be and hereby is liable for:

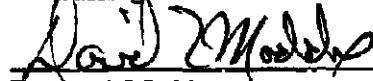
<u>Forum Fees</u>	= \$	1,687.50
<u>Total Fees</u>	= \$	1,687.50
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	1,687.50

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Non-Public Arbitrator, Presiding Chair

7/21/05  
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NASD Dispute Resolution  
 Arbitration No. 04-03609  
 Award Page 5 of 5

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<u>Forum Fees</u>	= \$	1,687.50
<u>Total Fees</u>	= \$	1,687.50
<u>Less payments</u>	= \$	-0.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$</b>	<b>1,687.50</b>

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 Non-Public Arbitrator

*7/21/05*  
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Respondent, David Scott O'Block, shall be and hereby is liable for:

<u>Forum Fees</u>	= \$	1,687.51
<u>Total Fees</u>	= \$	1,687.51
<u>Less payments</u>	= \$	-0.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$</b>	<b>1,687.51</b>

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Concurring Arbitrators:

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 Non-Public Arbitrator, Presiding Chair

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 Non-Public Arbitrator

\_\_\_\_\_  
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*G. Michael Cross*  
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*7-21-05*  
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George Michael Cross  
 Non-Public Arbitrator

Signature Date

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