

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

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In the Matter of the Arbitration Between:

Richard Raymond Lee (Claimant) v. Mellon Securities LLC (Respondent)

Case Number: 04-04915

Hearing Site: New York, New York

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Nature of the Dispute: Associated Person v. Member

**REPRESENTATION OF PARTIES**

Claimant Richard Raymond Lee hereinafter referred to as "Claimant": Robert H. Hotz, Jr., Esq., Akin, Gump, Strauss, Hauer & Feld, LLP, New York, NY.

Respondent Mellon Securities, LLC hereinafter referred to as "Respondent": Stephanie Wilson, Esq., Reed Smith, LLP, Princeton, NJ.

**CASE INFORMATION**

Statement of Claim filed on or about: July 7, 2004.

Reply to Respondent's Counterclaims filed on or about: October 11, 2004.

Claimant signed the Uniform Submission Agreement: July 7, 2004.

Mellon Securities LLC's Answer to Claimant's Statement of Claim and Counterclaims filed on or about: October 1, 2004.

Respondent signed the Uniform Submission Agreement: September 29, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of employment agreement; wrongful termination; fraudulent inducement; interference with prospective business relations; and defamation.

Unless specifically admitted in his Reply to Respondent's Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In its Counterclaim, Respondent asserted the following causes of action: breach of duty of loyalty, and breach of the covenant of good faith and fair dealing.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$5,000,000.00; pre-judgment and post-judgment interest at the maximum rate allowable by law; punitive damages in the amount of \$10,000,000.00; an order directing Respondent to withdraw its false and defamatory Form U-5 and to file an Amended U-5, with respect to Lee's termination, stating that Lee was not terminated for cause and did not breach the Employment Agreement; and such other and further relief that the Arbitration Panel deems just and proper.

In his Reply to the Counterclaim, Claimant requested that the Counterclaim be dismissed in its entirety.

Respondent requested that the Panel dismiss the Statement of Claim in its entirety; grant Respondent's Counterclaims; and award damages in an amount to be determined at the proceeding.

In its Counterclaim, Respondent requested that the Statement of Claim be dismissed with no damages awarded against Respondent, that its Counterclaims be granted and that it be awarded damages in an amount to be determined at the proceeding.

### **OTHER ISSUES CONSIDERED AND DECIDED**

At the hearing, Claimant's Motion to Dismiss Respondent's Counterclaim was considered and denied by the Panel.

At the hearing, Respondent's Motion to Dismiss was considered and denied by the Panel.

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. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of \$425,000.00.
2. The Panel orders the termination comment (i.e., alleged breach of employment agreement) reported in Item 3 on the Form U-5, Uniform Termination Notice for Securities Industry, executed by Mellon Securities LLC (CRD 47268, formerly known as FutureShare Financial LLC) and filed with NASD to be expunged. The replacement language for the termination comment is "Terminated – Job Eliminated." No change to the reason for termination (i.e.,

discharge); only the accompanying termination comment. The expungement recommendation is based on the defamatory nature of the information contained in CRD.

3. Respondent's Counterclaim is dismissed in its entirety.
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	= \$ 600.00
Counterclaim filing fee	= \$ 500.00

#### **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, Mellon Securities LLC is a party.

Member surcharge	= \$ 3,750.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,500.00</u>
Total Member Fees	= \$10,000.00

#### **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: December 6, 2004 1 session	

Twenty-five (25) Hearing sessions @ \$1,200.00	= \$30,000.00
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Hearing Dates:	May 23, 2005	2 sessions
	May 24, 2005	2 sessions
	May 25, 2005	2 sessions
	May 26, 2005	2 sessions
	June 2, 2005	2 sessions
	June 14, 2005	2 sessions
	June 21, 2005	2 sessions
	June 22, 2005	1 session
	September 1, 2005	2 sessions
	September 2, 2005	2 sessions
	September 13, 2005	2 sessions
	September 19, 2005	2 sessions

September 20, 2005 2 sessions

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Total Forum Fees = \$31,200.00

1. The Panel has assessed \$15,600.00 of the forum fees against Claimant.
2. The Panel has assessed \$15,600.00 of the forum fees against Respondent.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$15,600.00
<hr/> Total Fees	<hr/> = \$16,200.00
Less payments	= \$ 6,200.00
Balance Due NASD Dispute Resolution	= \$10,000.00

2. Respondent is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$10,000.00
Forum Fees	= \$15,600.00
<hr/> Total Fees	<hr/> = \$26,100.00
Less payments	= \$11,500.00
Balance Due NASD Dispute Resolution	= \$14,600.00

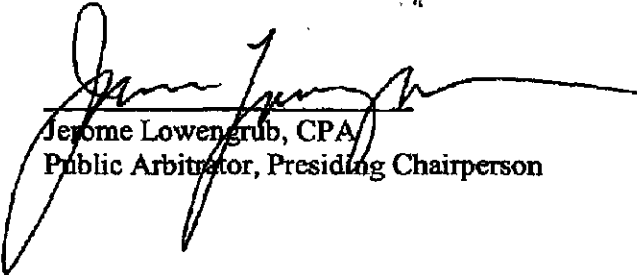
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Jerome Lowengrub, CPA	-	Public Arbitrator, Presiding Chairperson
Biagio A. Civile	-	Public Arbitrator
Joseph C. Pickard, Jr., Esq.	-	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.

  
\_\_\_\_\_  
Jerome Lowengrub, CPA  
Public Arbitrator, Presiding Chairperson

10/10/05  
\_\_\_\_\_  
Signature Date

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Biagio A. Civile  
Public Arbitrator

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

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Joseph C. Pickard, Jr., Esq.  
Non-Public Arbitrator

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Signature Date

OCTOBER 11, 2005  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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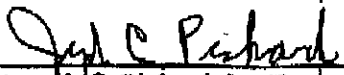
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