

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Norman Bulow (Claimant) vs. M.J. Whitman, LLC, David Barse, and Martin J. Whitman (Respondents)

Case Number: 04-06877

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Norman Bulow hereinafter referred to as "Claimant": Theodore G. Eppenstein, Esq., Eppenstein and Eppenstein, New York, NY.

Respondents M.J. Whitman, L.L.C. ("M.J. Whitman"), David Barse ("Barse"), and Martin J. Whitman ("Whitman") hereinafter collectively referred to as "Respondents": David R. Lagasse, Esq., Dreier LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: September 29, 2004.

Claimant signed the Uniform Submission Agreement: September 21, 2004.

Joint Statement of Answer filed on or about: March 21, 2005.

M.J. Whitman signed the Uniform Submission Agreement: March 21, 2005.

Barse signed the Uniform Submission Agreement: March 21, 2005.

Whitman signed the Uniform Submission Agreement: March 21, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; unjust enrichment; bad faith; wrongful termination of employment; defamation; and, negligence.

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

RELIEF REQUESTED

Claimant requested unspecified compensatory damages, unspecified punitive damages, interest, attorney's fees, costs, and all other relief that the Panel may award.

Respondents requested that Claimant's claims be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

FINDINGS

After considering the pleadings, the testimony and evidence presented at the hearings, and the post-hearing submissions, the Panel has made the following findings:

1. By the manner in which it terminated Claimant's employment, including but not limited to its reliance upon pretextual "failures to conform to firm policies," Respondent M.J. Whitman tortiously interfered with Claimant's prospective economic advantage and with his ability to work out a reasonable and orderly retirement.
2. The reasons offered by Respondents to justify termination of the Claimant's employment for "failures to conform to firm policies" were pretextual.
3. The statement in Claimant's Form U-5 that he was terminated for "failures to conform to firm policies" was, in the context in which it was made, defamatory.
4. The Panel is troubled by M.J. Whitman's inconsistent procedures in place for supervision of employees and for ensuring compliance with firm policies and NASD rules.

AWARD

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

1. Respondent M.J. Whitman is liable for and shall pay to the Claimant \$500,000.00 in compensatory damages, plus interest at the rate of 9% per annum accruing from April 20, 2004 until the date the award is paid in full.
2. Respondent M.J. Whitman is liable for and shall pay to the Claimant \$250.00 as reimbursement of the filing fee previously paid to NASD Dispute Resolution.
3. The Panel recommends the expungement of the termination comment "employee's failure to conform to firm policies and disagreements with firm management" and that it shall be replaced with the following language "differences of opinion with firm management." The Panel recommends the expungement of Norman Bulow's registration records maintained by the NASD Central Registration Depository ("CRD") based on the defamatory nature of the information.
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	= \$ 250.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, M.J. Whitman, LLC, is a party.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

May 30, 2006 and June 5, 2006 adjournment by the Respondents	= \$ 1,000.00
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Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

Three (3) Pre-hearing conference sessions with Panel @ \$1,000.00 per session	
	= \$ 3,000.00

Pre-hearing conferences:	July 27, 2005	1 session
	November 2, 2005	1 session
	June 13, 2006	1 session

Two (2) Pre-hearing conference sessions with a single arbitrator @ \$450.00 per session	
	= \$ 900.00

Pre-hearing conferences:	December 29, 2005	1 session
	January 19, 2006	1 session

Sixteen (16) Hearing sessions at \$1,000.00 per session	= \$16,000.00
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Hearing Dates:	February 21, 2006	2 sessions
	February 22, 2006	2 sessions
	February 23, 2006	2 sessions
	February 24, 2006	2 sessions
	February 27, 2006	2 sessions
	July 28, 2006	2 sessions

	July 31, 2006	2 sessions	
	August 3, 2006	2 sessions	
<hr/> Total Forum Fees			= \$19,900.00

The Panel has assessed \$19,900.00 of the forum fees against Respondent M.J. Whitman.

Fee Summary

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 250.00
<u>Total Fees</u>	= \$ 250.00
<u>Less payments</u>	= \$ 1,250.00
<u>Refund due the Claimant</u>	= \$ 1,000.00

2. Respondent M.J. Whitman is solely liable for:

<u>Member Fees</u>	= \$ 4,450.00
<u>Forum Fees</u>	= \$19,900.00
<u>Total Fees</u>	= \$24,350.00
<u>Less payments</u>	= \$ 5,450.00
<u>Balance Due NASD Dispute Resolution</u>	= \$18,900.00

3. Respondents are jointly and severally liable for:

<u>Adjournment Fee</u>	= \$ 1,000.00
<u>Total Fees</u>	= \$ 1,000.00
<u>Less payments</u>	= \$ 1,000.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

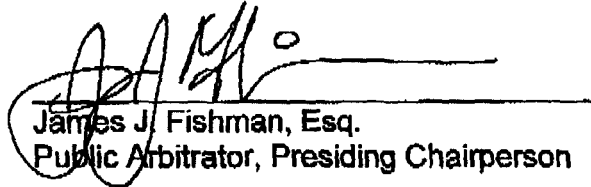
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

James J. Fishman, Esq.	-	Public Arbitrator, Presiding Chair
David N. Brainin, Esq.	-	Public Arbitrator
Andrew Freund	-	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.


James J. Fishman, Esq.
Public Arbitrator, Presiding Chairperson

1 November 2006
Signature Date

David N. Brainin, Esq.
Public Arbitrator

Signature Date

Andrew Freund
Non-Public Arbitrator

Signature Date

November 1, 2006

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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James J. Fishman, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



David N. Brainin, Esq.
Public Arbitrator

10/31/06
Signature Date

Andrew Freund
Non-Public Arbitrator

Signature Date

November 1, 2006
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

James J. Fishman, Esq.	-	Public Arbitrator, Presiding Chair
David N. Brainin, Esq.	-	Public Arbitrator
Andrew Freund	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

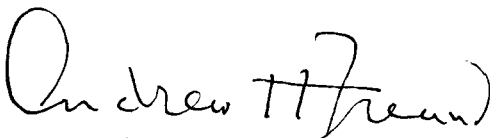
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James J. Fishman, Esq.
Public Arbitrator, Presiding Chairperson

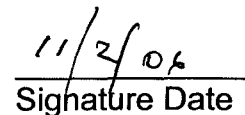
Signature Date

David N. Brainin, Esq.
Public Arbitrator

Signature Date



Andrew Freund
Non-Public Arbitrator


Signature Date

November 1, 2006
Date of Service (For NASD Dispute Resolution use only)