

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Adam Matthew Tirado (Claimant) v. PHD Capital, Jody Eisenman, Peter Hoffman, Nelson Braff, Christopher Howard Jacobsen, Jack Wilson, Anthony Knox, Jordan Ched Gelb, Josh Griffiths, Rick Jones, John Wong, Brian Schwartz, and Ron Itin (Respondents)

Case Number: 04-07008

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Adam Matthew Tirado hereinafter referred to as "Claimant" appeared *pro se*.

Respondents PHD Capital Corp. ("PHD"), Jody Eisenman ("Eisenman"), Peter Hoffman ("Hoffman"), Nelson Braff ("Braff"), Christopher Howard Jacobsen ("Jacobsen"), Jack Wilson ("Wilson"), Richard Jones ("Jones"), and Brian Schwartz ("Schwartz"): Faun M. Phillipson, Esq., Phillipson & Uretsky, LLP, New York, NY.

Respondent Joshua Griffiths ("Griffiths") appeared *pro se*.

Respondents Jordan Ched Gelb ("Gelb") and Ron Itin ("Itin"): David R. Lagasse, Esq., Pillsbury Winthrop, LLP, New York, NY.

Respondent Anthony Knox ("Knox") did not enter an appearance in this matter.

Respondent John Wong ("Wong") did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: October 2, 2004.

Answer to Motion to Dismiss from Respondents PHD, Eisenman, Hoffman, Braff, Jacobsen, Wilson, Jones, and Schwartz filed by Claimant on or about: December 13, 2004.

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

Joint Statement of Answer and Motion to Dismiss filed by Respondents PHD, Eisenman, Hoffman, Braff, Jacobsen, Wilson, Jones and Schwartz on or about: November 23, 2004.

Respondent PHD did not sign the Uniform Submission Agreement.

Respondent Eisenman did not sign the Uniform Submission Agreement.

Respondent Hoffman did not sign the Uniform Submission Agreement.
Respondent Braff did not sign the Uniform Submission Agreement.
Respondent Jacobsen did not sign the Uniform Submission Agreement.
Respondent Wilson did not sign the Uniform Submission Agreement.
Respondent Jones did not sign the Uniform Submission Agreement.
Respondent Schwartz did not sign the Uniform Submission Agreement.

Statement of Answer filed by Respondent Griffiths on or about: November 22, 2004.
Respondent Griffiths did not sign the Uniform Submission Agreement.

Respondent Gelb did not file a Statement of Answer or sign the Uniform Submission Agreement.

Respondent Itin did not file a Statement of Answer or sign the Uniform Submission Agreement.

Respondent Knox did not file a Statement of Answer or sign the Uniform Submission Agreement.

Respondent Wong did not file a Statement of Answer or sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: libel; slander; libel and slander on his Form U-5; and wrongful termination.

Unless specifically admitted in their Answer and Motion to Dismiss, Respondents PHD, Eisenman, Hoffman, Braff, Jacobsen, Wilson, Jones and Schwartz denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Respondent Griffiths denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$100,000.00; punitive damages in the amount of \$900,000.00; require that PHD remove slander from U-4 and U-5; forum fees in the amount of \$825.00; and other case-related costs in the amount of \$2,250.00.

Respondents PHD, Eisenman, Hoffman, Braff, Jacobsen, Wilson, Jones and Schwartz requested that the Panel issue an Order: (1) dismissing with prejudice the claims against the moving parties; (2) expunging this matter from the CRD records of PHD, Eisenman, Hoffman, Braff, Jacobsen, Wilson, Jones and Schwartz; and (3) costs, including attorneys' fees.

Respondent Griffiths requested dismissal from this claim.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondents Knox and Wong have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents PHD, Eisenman, Hoffman, Braff, Jacobsen, Wilson, Jones, Schwartz, and Griffiths did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

At the initial pre-hearing conference on February 18, 2005, Claimant voluntarily dismissed his claims against Respondents Wilson, Knox, Gelb, Griffiths, Wong, and Itin.

The Panel reviewed Respondents' Motion to Dismiss and Claimant's response. After due consideration, the Panel determined the following: "The undersigned Panel of arbitrators hereby grants Respondents' Motion to Dismiss after considering the Motion and Claimant's reply to the Motion.

Claimant's claim of wrongful termination and libel or slander of Form U-5 is dismissed upon this Panel's acceptance of all facts pleaded in the claim as being true. It appears beyond doubt that Claimant can prove no set of facts in support of his claim that would entitle him to an award as requested in this case.

Claimant was an at-will employee and therefore could leave Respondent PHD's employ at any time he chose. Likewise, his employer could terminate his employment at any time for cause or without cause. Claimant recites no facts that would indicate he is in any protected class of employees under any federal or state statutes or any facts that would support any such claim of employment discrimination.

Claimant alleges no facts that would overcome the privilege recognized for the Respondent employer's filing of the form U-5 in this case upon his termination from employment.

Claimant alleges no facts that would support any independent causes of action against any of the individuals named in the claim.

This dismissal of Claimant's claim is in full and complete satisfaction of the allegations brought before this 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, and Respondents' Motion to Dismiss and Claimant's Reply, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their 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

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, PHD Capital is a party.

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

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: February 18, 2005 1 session
Total Forum Fees = \$1,200.00

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

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 975.00
Less payments	= \$1,575.00
Refund Due Claimant	= \$ 600.00

2. Respondent PHD is solely liable for:

Member Fees	= \$3,000.00
<u>Forum Fees</u>	<u>= \$ 600.00</u>
Total Fees	= \$3,600.00
<u>Less payments</u>	<u>= \$3,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 600.00

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

NASD Dispute Resolution

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Carole D. Green, Esq.

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Public Arbitrator, Presiding Chairperson

Natalie J. Marshall, Esq.

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Public Arbitrator

Scott M. Pellegrino

-

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.



Carole D. Green, Esq.

Public Arbitrator, Presiding Chairperson

Signature Date_____
Natalie J. Marshall, Esq.

Public Arbitrator

Signature Date_____
Scott M. Pellegrino

Non-Public Arbitrator

Signature Date_____
March 11, 2005_____
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Carole D. Green, Esq.	-	Public Arbitrator, Presiding Chairperson
Natalie J. Marshall, Esq.	-	Public Arbitrator
Scott M. Pellegrino	-	Non-Public Arbitrator

Consenting 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.

Carole D. Green, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Natalie J. Marshall, Esq.
Public Arbitrator

Signature Date

Scott M. Pellegrino
Non-Public Arbitrator

Signature Date

March 11, 2005

Date of Service (For NASD Dispute Resolution use only)

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ARBITRATION PANEL

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Natalie J. Marshall, Esq.	-	Public Arbitrator
Scott M. Pellegrino	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Carole D. Green, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Natalie J. Marshall, Esq.
Public Arbitrator

Signature Date



Scott M. Pellegrino
Non-Public Arbitrator

Signature Date

March 11, 2005

Date of Service (For NASD Dispute Resolution use only)