

## **Stipulated Award NASD Dispute Resolution**

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In the matter of the Arbitration Between:

Patrick J. Brown (Claimant) v. New England Securities Inc. (Respondent)

Case Number: 04-07133

Hearing Site: Buffalo, New York

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Nature of the Dispute: Associated Person v. Member

### **REPRESENTATION OF PARTIES**

Claimant Patrick J. Brown hereinafter referred to as "Claimant": Paul K. Stecker, Esq., Phillips Lytle LLP, Buffalo, NY.

Respondent New England Securities Inc. hereinafter referred to as "Respondent": John A. Berg, Esq., Connelly Sheehan Harris, Chicago, IL.

### **CASE INFORMATION**

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

Claimant signed the Uniform Submission Agreement: October 6, 2004.

Answer to Statement of Claim filed by Respondent on or about: December 1, 2004.

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

### **CASE SUMMARY**

Claimant asserted the following causes of action: Respondent allegedly filed false, misleading and defamatory information on Claimant's Form U-5.

In its Statement of Answer, Respondent denied making any defamatory statements and denied any liability to Claimant. Except as specifically admitted, Respondent denied the allegations in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested expungement from the CRD system of the defamatory information in the Form U-5 previously filed by Respondent; compensatory damages in the amount of \$100,000.00 plus such additional damages as may accrue to the time of the Panel's decision; punitive damages, attorneys' fees and the costs of this proceeding.

Respondent requested that the Statement of Claim be dismissed in its entirety.

**OTHER ISSUES CONSIDERED AND DECIDED**

On or about July 21, 2005 the parties entered into a settlement agreement.

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

**AWARD**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. NASD, Inc. and CRD shall expunge the following statement from the allegation fields on the Internal Review and Termination Disclosure Reporting pages (DRPs) relating to question 7(B) and 7 (F)(1) respectively, in Claimant's Form U-5 as filed with CRD by Respondent New England Securities, Inc. (CRD 615) on or about July 12, 2004:  
ISSUES INVESTIGATED INCLUDED: THE PAYMENT OF COMMISSIONS, IN CASH, TO REPRESENTATIVE NOT LISTED ON A UNIVERSAL LIFE APPLICATION, THE PAYMENT OF LEGAL FEES ON BEHALF OF A CLIENT AND POTENTIAL FORGERIES. THE INVESTIGATION ALSO REVEALED THAT MR. BROWN ALLOWED AN INDIVIDUAL TO ACT AS A SPECIAL NEEDS SPECIALIST WHO DID NOT MEET COMPANY REQUIREMENTS.
2. NASD and CRD shall insert the following replacement language in the allegation fields on the respective DRPs in place of the statements expunged pursuant to the preceding paragraph:  
ISSUES UNDER INVESTIGATION AT TIME MR. BROWN (AN "AT WILL" EMPLOYEE) WAS TERMINATED AS MANAGER OF AGENCY INCLUDED: PAYMENT OF COMMISSIONS FOR UNIVERSAL LIFE POLICY TO REPRESENTATIVE NOT LISTED ON APPLICATION; AGENCY'S PAYMENT OF \$1025 FEE TO LAWYER WHO PREPARED TRUST AGREEMENT FOR CLIENT; QUESTIONS CONCERNING SIGNATURES ON FORMS BY TWO CLIENTS OF AGENCY; AGENCY PERMITTING REPRESENTATIVE WHO DID NOT MEET REQUIREMENTS TO FUNCTION AS "MET DESK SPECIALIST."
3. NASD and CRD shall further expunge the amended Form U-5 filed with CRD on or about August 17, 2004 for the purpose of updating Part II of the Internal Review DRP. This amended Form U-5 filing shall be expunged in its entirety (as if it was never filed ) as the only update made on that filing was to Part II of the Termination DRP.

4. NASD and CRD shall expunge the information reported in the allegations field on the Form U-4 Termination DRP, specifically:  
ISSUES INVESTIGATED INCLUDED PAYMENT OF CASH TO A REP NOT LISTED ON A UNIVERSAL LIFE POLICY, THE PAYMENT OF A LEGAL FEE ON BEHALF OF A CLIENT, AND POTENTIAL FORGERIES. ALLOWING A PERSON TO ACT AS A SPECIAL NEEDS SPECIALIST WHO DID NOT MEET COMPANY REQUIREMENTS.
5. NASD and CRD shall insert the following replacement language in the allegation fields on the respective DRPs in place of the statements expunged pursuant to the preceding paragraph:  
ISSUES UNDER INVESTIGATION AT THE TIME MR. BROWN (AN "AT WILL" EMPLOYEE) WAS TERMINATED AS MANAGER OF AGENCY INCLUDED: PAYMENT OF COMMISSIONS FOR UNIVERSAL LIFE POLICY TO REPRESENTATIVE NOT LISTED ON APPLICATION; AGENCY'S PAYMENT OF \$1025 FEE TO LAWYER WHO PREPARED TRUST AGREEMENT FOR CLIENT; QUESTIONS CONCERNING SIGNATURES ON FORMS BY TWO CLIENTS OF AGENCY; AGENCY PERMITTING REPRESENTATIVE WHO DID NOT MEET REQUIREMENTS TO FUNCTION AS "MET DESK SPECIALIST."
6. The Panel recommends the expungement of all reference to the above-captioned arbitration from Claimant Brown's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Claimant Brown must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
7. Except as provided above, Claimant's claims against Respondent are dismissed with prejudice.

### **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	= \$ 225.00
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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. In this matter, the member firm New England Securities Inc. is a party.

Member Surcharge	= \$ 1,100.00
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Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 1,700.00
Total Member Fees	= \$ 3,550.00

**Forum Fees and Assessments**

The 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00 = \$ 450.00  
Pre-hearing conference: May 23, 2005 1 session

One (1) Pre-hearing conference session with the Panel @ \$750.00 = \$ 750.00  
Pre-hearing conference: February 15, 2005 1 session

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Total Forum Fees	= \$ 1,200.00
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1. The Panel has assessed \$375.00 of the forum fees from the February 15, 2005 pre-hearing session against Claimant. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Claimant has been assessed \$225.00 of the forum fees from the May 23, 2005 pre-hearing session. In total, Claimant has been assessed \$600.00 of the total forum fees incurred in this arbitration.
2. The Panel has assessed \$375.00 of the forum fees from the February 15, 2005 pre-hearing session against Respondent. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent has been assessed \$225.00 of the forum fees from the May 23, 2005 pre-hearing session. In total, Respondent has been assessed \$600.00 of the total forum fees incurred in this arbitration.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$ 600.00
Total Fees	= \$ 825.00
<u>Less payments</u>	= \$ 1,575.00
Refund Due Claimant	= \$ 750.00

2. Respondent is solely liable for:

Member Fees	= \$ 3,550.00
<u>Forum Fees</u>	= \$ 600.00
Total Fees	= \$ 4,150.00
<u>Less payments</u>	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 600.00

All balances are due and payable to NASD Dispute Resolution.

**ARBITRATION PANEL**

Anthony J. Colucci, III, Esq.	-	Public Arbitrator, Presiding Chair
Richard J. Lehner	-	Public Arbitrator
Birgitta K. Siegel, 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 is which is my award.



Anthony J. Colucci, III, Esq.  
Public Arbitrator, Presiding Chair

January 23, 2006

Signature Date

Richard J. Lehner  
Public Arbitrator

Signature Date

Birgitta K. Siegel, Esq.  
Non-Public Arbitrator

Signature Date

February 3, 2006

Date of Service (For NASD office use only)

**ARBITRATION PANEL**

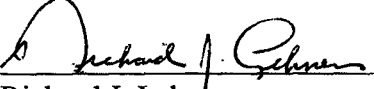
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Anthony J. Colucci, III, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

  
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Richard J. Lehner  
Public Arbitrator

1-25-06  
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Signature Date

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Birgitta K. Siegel, Esq.  
Non-Public Arbitrator

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Signature Date

February 3, 2006

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Date of Service (For NASD office use only)

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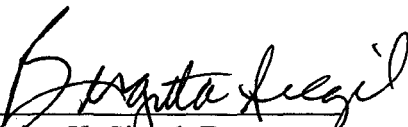
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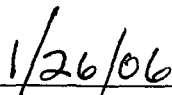
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Birgitta K. Siegel, Esq.  
Non-Public Arbitrator

  
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Signature Date

February 3, 2006

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Date of Service (For NASD office use only)