

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

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In the Matter of the Arbitration Between:

William K. Dean (Claimant) v. Richard W. O'Donnell, Barbara K. Ross, and Mellon Investor Services, LLC (Respondents)

Case Number: 04-07738

Hearing Site: Newark, New Jersey

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

**REPRESENTATION OF PARTIES**

Claimant William K. Dean ("Dean") hereinafter referred to as "Claimant" appeared *pro se*.

Respondents Richard W. O'Donnell ("O'Donnell") and Mellon Investor Services, LLC ("Mellon"): Catherine S. Ryan, Esq., Reed Smith, LLP, Pittsburgh, PA.

Respondent Barbara K. Ross ("Ross") did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: November 3, 2004.

Claimant signed the Uniform Submission Agreement: November 3, 2004.

Statement of Answer filed by Respondent O'Donnell on or about: December 23, 2004.

Respondent O'Donnell signed the Uniform Submission Agreement: December 23, 2004.

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

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

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; wrongful termination; and discrimination based upon disability.

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

### **RELIEF REQUESTED**

Claimant requested punitive damages in the amount of \$1,000.00; costs; and to be reinstated as a registered employee.

Respondent O'Donnell requested that the claim be dismissed in its entirety.

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

Respondent Mellon did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Respondent Ross is not an associated person of an NASD member firm and, therefore, was not required to arbitrate in this forum and did not submit to NASD Dispute Resolution's jurisdiction.

During the hearing, Claimant made an oral motion to add Mellon as a Respondent, on consent of all parties and counsel for Respondent O'Donnell. Counsel for Respondent O'Donnell obtained authorization from Mellon and appeared on Mellon's behalf. Claimant also added a complaint of discrimination on the basis of disability against Respondent Mellon and the other Respondent in terminating his Series 27 license by U-5.

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 the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The claim is dismissed. The action taken by Respondent Mellon in terminating Claimant's Series 27 Registration with it was required by NASD Rule 1031(a) and not in violation of the Settlement Agreement between Claimant and Mellon. There was no evidence that Mellon's decision was in any way caused by discrimination against Claimant on account of his disability. Respondents O'Donnell and Ross were agents of a known principal (Mellon) and acted on its behalf and with its agreement. There is no basis for personal liability on their part.
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 = \$25.00

**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, Mellon Securities, LLC is the firm that the parties were associated with at the time of the dispute.

Member surcharge = \$150.00

**Forum Fees and Assessments**

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the sole arbitrator @ \$25.00 = \$25.00  
Pre-hearing conference: February 23, 2005 1 session

One (1) Hearing session @ \$25.00 = \$25.00  
Hearing Date: March 21, 2005 1 session

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Total Forum Fees = \$50.00

1. The Arbitrator has assessed \$25.00 of the forum fees against Claimant.
2. The Arbitrator has assessed \$25.00 of the forum fees against Respondent Mellon.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 25.00
<u>Forum Fees</u>	= \$ 25.00
Total Fees	= \$ 50.00
<u>Less payments</u>	= \$ 50.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Mellon is solely liable for:

Member Fees	= \$150.00
<u>Forum Fees</u>	= \$ 25.00
Total Fees	= \$175.00
<u>Less payments</u>	= \$150.00
Balance Due NASD Dispute Resolution	= \$ 25.00

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

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**ARBITRATOR**

David N. Brainin, Esq.

- Sole Public Arbitrator

**Arbitrator's Signature**

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.



David N. Brainin, Esq.  
Sole Public Arbitrator

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Signature Date

March 28, 2005

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Date of Service (For NASD Dispute Resolution use only)