

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :
David Lerner Associates, Inc. :
Claimant : CASE #90-01251
vs. : AWARD
Barry S. Schein :
Respondent :

CASE SUMMARY

In a claim filed with the NASD, Inc. on May 3, 1990, Claimant David Lerner Associates, Inc. alleged in connection with an employment contract the Respondent entered into with the Claimant, the Respondent agreed that in the event he voluntarily terminated his association with Claimant within two years after the date of the employment contract and became associated with a competitor of Claimant's within 100 miles of Claimant's office in which the Respondent was employed he would pay the Claimant a liquidated damage fee. The Respondent, by signing the contract, also agreed not to remove from Claimant's premises any records of Claimant's except with the permission of an office manager for the purpose of conducting business and the Respondent further agreed that he would return to the Claimant any original records and purge or destroy any computerized, duplicated or copied records which he caused to be removed from the Claimant. Claimant further maintained the Respondent has breached the terms of the employment contract and the Claimant has fulfilled its obligation in full under the contract.

Respondent, Barry S. Schein, maintained as per the terms of the employment contract he has not engaged employment with a competitor of the Claimant, has not contacted nor attempted to contact any of Claimant's customers and that all customer records and files were left with the Claimant and he does not have any duplicate copies in his possession. Respondent further maintained the Claimant should not be entitled to any liquidated damages as Respondent was a fully qualified registered representative when hired by Claimant and received no formal securities training while associated with the Claimant and there has been no material breach of the terms or the intent of the Claimant's employment contract.

RELIEF REQUESTED

Claimant requested liquidated damages of \$16,000.00 plus an order enjoining Respondent for two years from soliciting any of Claimant's clients whose names became known to Respondent while he was affiliated with Claimant and an order directing Respondent to return to Claimant all original records and to purge or destroy all computerized, duplicated or copied records which contain the names of Claimant's clients. Respondent requested dismissal of Claimant's claim in its entirety and that Respondent be awarded all costs and attorney's fees and any other relief the panel deems appropriate.

AWARD

On November 7, 1990 the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant David Lerner Associates, Inc. on May 1, 1990 and by Respondent Barry S. Shein on June 21, 1990. The hearing was conducted at the NASD offices located in New York City, NY and consisted of one hearing session. The arbitrator, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. At the commencement of the hearing, the Claimant, David Lerner Associates, Inc., withdrew his request for injunctive relief and withdrew his request that the Respondent return documents that were in his possession to the Claimant.
2. The Claimant's claim for monetary liquidated damages be and hereby is dismissed in all respects.
3. The parties shall each bear their respective costs including attorney's fees.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$750.00 filing fee previously deposited by the Claimant.

DATED: November 27, 1990

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CONCURRING ARBITRATOR

Robert I. Rabinowitz
Robert Ira Rabinowitz