

N.A.S.D. AWARD

In the Matter of Arbitration Between	:
	:
<u>Name of Claimant</u>	:
	:
Michael Blueweiss	:
	:
91-02315	:
	:
<u>Name of Respondents</u>	:
	:
David Lerner Associates, Inc.	:
Roger Waldeck	:
	:

REPRESENTATION

For Claimant Michael Blueweiss (Blueweiss) : Sebastian Ragusa, Esq. and Cynthia McGuire, Esq. of the law firm of Sebastian Ragusa.

For Respondents David Lerner Associates, Inc. and Roger Waldeck: Robert J. Hume, III, Esq. of David Lerner Associates, Inc.

CASE INFORMATION

Statement of Claim filed: July 29, 1991.

Claimant's Submission Agreement signed on: July 22, 1991.

Joint Statement of Answer filed by Respondent David Lerner Associates, Inc. and Roger Waldeck on: September 26, 1991.

Respondent David Lerner Associates, Inc.'s Submission Agreement signed on: September 26, 1991.

Respondent Roger Waldeck's Submission Agreement signed on: October 29, 1991.

Claimant Michael Blueweiss Statement of Reply filed on: October 22, 1991.

HEARING INFORMATION

Hearing Date/Sessions: May 5, 1992/2 sessions

Hearing Location: NASD Offices located in New York, New York.

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CASE SUMMARY

Claimant alleged that he was employed by Respondent David Lerner Associates, Inc. from 1980 until he voluntarily resigned in February, 1988. Claimant further alleged that on or about August 2, 1988, Respondents maliciously published by U.S. Mail, a letter to all Claimant's clients that stated "As you know, Mr. Blueweiss is terminated as an employee of this firm". Claimant further alleged that because of the defamatory publication, Claimant was severely injured in his reputation and good standing, and a number of clients who relied on Claimant's reputation and credibility have ceased to deal with him after reading the defamatory letter. Claimant maintained he was deprived of their custom and trade which he would have enjoyed but for the publication of the false and defamatory words.

Respondent denied that they maliciously published a letter to all of Claimant's clients. Respondents maintained they sent a letter, but it was true and not malicious. Respondents alleged as an affirmative defense that the claim failed to state a legally sufficient cause of action and that New York law states "a mere statement of discharge from employment does not constitute libel." Respondents also maintained that truth is a complete defense, and Claimant is barred from pursuing the claim by the actual statute of limitations, laches, and by failure to plead special damages. Respondents alleged a counterclaim against Claimant for frivolous conduct.

In response to the counterclaim, Claimant maintained the claim has merit in law and fact and the letter the claim is based on conveyed the impression that Claimant was fired, when in fact Claimant had voluntarily resigned. Claimant alleged the letter was defamatory and the Claimant did plead special damages in his Statement of Claim.

RELIEF REQUESTED

Claimant requested judgement against the Respondents in the sum of \$3,000,000.00, plus interest, costs and disbursements of this action and any relief that may be proper in law and equity. Claimant further requested dismissal of the counterclaim.

Respondents requested the claim be dismissed plus an award in favor of Respondents on Claimant's counterclaim together with such other and further relief as is just and proper.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims by the Claimant against the Respondent are dismissed with prejudice as being time-barred.
2. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum fees are assessed:


2 sessions X \$1,000.00 = \$2,000.00 minus hearing session deposit of \$1,000.00 = net \$1,000.00 due.


The Claimant be and hereby is liable and shall pay to the National Association of Securities Dealers, Inc. the sum of \$1,000.00 to represent forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATOR SIGNATURES


John J. O'Neil, Esq.


Rudolph F. Barth


Mitchell Elberg, Esq.

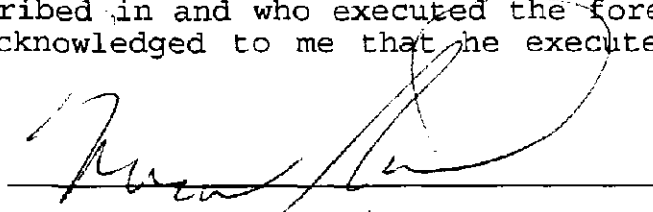
Date of Decision: June 8, 1992

STATE OF: New York
COUNTY OF: ~~New York~~ NASSAU

S.S.:

On this 26th day of May, 1992, before me personally appeared John J. O'Neill, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

MARIA BRODY
Notary Public, State of New York
No. 4932688
Qualified in Nassau County
Commission Expires July 25, 1994

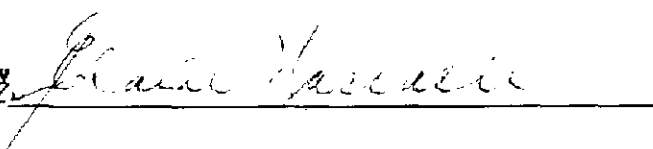


STATE OF: New York
COUNTY OF: New York

S.S.:

On this 31st day of June, 1992, before me personally appeared Rudolph F. Barth known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

ELAINE NACCACHE
Notary Public, State of New York
No. 41-4772422
Qualified in Queens County
Certificate Filed in New York County
Commission Expires 10/31/1994



STATE OF: New York
COUNTY OF: New York

S.S.:

On this 2nd day of June, 1992, before me personally appeared Mitchell Elberg known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

RUSSELL T. SAVAGE
Notary Public, State of New York
No. 41-4772422
Qualified in New York County
Commission Expires July 31, 1993

