

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John F. Flannery

vs.

Case #
93-00079

Name of Respondents

Shearson Lehman Brothers, Inc.
Samuel Paul Crabtree
Bruce G. Spence

REPRESENTATION

Claimant John F. Flannery ("Claimant"), was represented by Frederic N. Halstrom, Esq., from the law firm of Halstrom Law Offices, P.C. located in Boston, Massachusetts.

Respondents, Shearson Lehman Brothers, Inc. ("Shearson"), Samuel Paul Crabtree ("Crabtree") and Bruce G. Spence ("Spence"), herein collectively referred to as "Respondents", were represented by Robert Buhlman, Esq., from the law firm of Bingham, Dana & Gould located in Boston, Massachusetts.

CASE INFORMATION

Statement of Claim was filed on July 2, 1993.

Claimant's Submission Agreement was signed on July 22, 1993.

Respondent Shearson's Submission Agreement was signed on October 8, 1993. Respondent Crabtree did not execute a Submission Agreement but was required to submit to arbitration pursuant to Section 8 of the *Code of Arbitration Procedure* ("Code").

Respondent Spence's Submission Agreement was signed on October 8, 1993. Joint Statement of Answer was filed by Respondents on October 8, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: November 21, 1994 - two sessions

November 29, 1994 - two sessions
December 12, 1994 - one session

Hearing Location: NASD offices located in Boston, Massachusetts.

CASE SUMMARY

Claimant alleges that on August 14, 1988, while employed with Respondent Shearson as Financial Consultant Broker, he became temporary disabled after suffering from a heart attack. As a result of his disability, the Claimant states, he made arrangements for his accounts to be serviced temporarily by other brokers. Claimant also alleges that on February 21, 1989, he was informed by Respondent Spence that the Claimant would be taken off the payroll, as an accounting procedure since he was approaching 6 months disability period. At this time, the Claimant states, nothing was said his termination or as to his accounts. Claimant states that he contacted Respondent Spence on or about March 7, 1989, and that his accounts were distributed several weeks ago and was further informed that his employment was terminated. Claimant alleges that he was denied access to his client list that he has built over the course of his career and was wrongfully terminated due to his disability. The Claimant further alleges that the actions of Respondents constitute intentional interference with Claimant's advantageous business relationships.

Respondents allege that Respondent Spence repeatedly contacted Claimant inquiring about his health and about his returning to work but was unable to get any definite answer. Respondents maintained that after, constant requests for verification of his medical condition, they received a letter from the Claimant's doctor, stating, simply that he was ill and would return to work in early 1989. Respondents state that the Claimant was provided with 26 weeks of temporary disability status. Respondents alleged that in February, 1989, Respondent Spence contacted Claimant and informed him that he had run out of 26 weeks of short-term leave and had not provided a date when he would return to work, so his active employment status would be terminated but would be eligible to pursue long term disability benefits. Respondents maintain that in his last conversation, Claimant did not mention his accounts or his clients. Respondents also maintain that the Claimant's accounts were not reassigned until January, 1989. Respondents further maintain that up until that point, a broker was assigned each day to service Claimant's accounts. Respondents state that Claimant filed a complaint with the Michigan Commission Against Discrimination and after two years of investigation, the Commission found that Claimant was not discriminated against when he was terminated. Respondents further maintain that the Claimant did not return to work in early 1989 as stated in the doctor's letter and that

Claimant never asked for a client list or any other records from Shearson.

RELIEF REQUESTED

Claimant requests lost income in the amount of \$1,978,000.00 over a 23 year period, \$1,000,000.00 in damages for loss of his reputation, emotional upset and punitive damages, plus costs of premiums for a \$392,000 life insurance policy.

Respondents request a dismissal of all claims.

OTHER ISSUES CONSIDERED & DECIDED

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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

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

1. All claims alleged by Claimant against the Respondents are denied.
2. All other claims for relief are denied.

FORUM FEES

Pursuant to Section 43(c) of the Code, the following Forum Fees are assessed: and shall be borne equally by the parties:

Non-refundable Filing Fee: \$500.00

Hearing Session Fees: \$5,000.00 (5 hearing sessions at \$1,000.00 per session)

Total Fees: \$5,500.00

1. Claimant is assessed \$2,750.00. Claimant previously paid \$500.00 and owes a balance of \$2,250.00.
2. Respondents are assessed \$2,750.00. Respondents previously paid \$0.00.

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

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ARBITRATION PANEL

Tom L. Peterson, Esq.	-	Public-Chair
John D. Hughes, Esq.	-	Industry Panelist
Missy D. Margolis	-	Public Panelist

Dissenting Arbitrator's Signature

Missy D. Margolis (did not agree w/ decision)
Missy D. Margolis

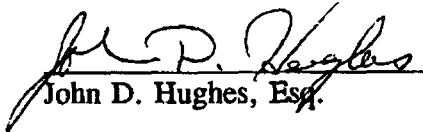
Date of Decision: January 19, 1995

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Tom L. Peterson, Esq.	-	Public-Chair
John D. Hughes, Esq.	-	Industry Panelist
Missy D. Margolis	-	Public Panelist

Concurring Arbitrator's Signature


John D. Hughes, Esq.

Date of Decision: January 19, 1995

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Concurring Arbitrator's Signature


Tom L. Peterson, Esq.

Date of Decision: January 19, 1995