

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Howard M. Silverman

94-00566

Name of Respondent

Richard A. Devine

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**REPRESENTATION**

Claimant Howard Silverman ("Claimant"), appeared pro se.

For Respondent, Richard A. Devine ("Respondent"), Lloyd Clareman, Esq., located in New York, New York.

**CASE INFORMATION**

Statement of Claim filed: February 12, 1994

Claimant's Submission Agreement signed on: April 10, 1995

Statement of Answer filed by Respondent on: June 2, 1994

Respondent's Submission Agreement signed on: June 1, 1994

**HEARING INFORMATION**

Hearing Dates/Sessions:	April 11, 1995	-	2 sessions
	April 10, 1995	-	2 sessions

Hearing Location: NASD Offices, 33 Whitehall Street, New York, NY 10004

**CASE SUMMARY**

Claimant alleges, as registered representatives, he and Respondent formed a Partnership wherein they equally shared revenues, expenses, clients and prospective resources. Claimant states that in 1989, he and Respondent entered into an agreement whereby Respondent agreed to pay

Claimant \$300,000.00 for his share of the Partnership, and Claimant would leave the Partnership and not compete with Respondent in a securities-related business for two years. Claimant states that Respondent breached the agreement by not honoring his obligations.

Respondent defends by stating no written or oral agreement ever existed between the two parties in this matter. Respondent states that he and Claimant had a loosely defined partnership wherein they shared commissions and bought some computer equipment, but that the "partnership" did not have any assets or built up any net worth. In addition, Respondent states that even if an oral contract existed, it would be barred by the Statute of Frauds. Respondent maintains Claimant has acted with "vengeance" and "malevolence" by bringing this arbitration.

#### **RELIEF REQUESTED**

Claimant requested \$300,000.00 in damages plus punitive damages, legal fees and costs.

Respondent requested all claims be dismissed in their entirety, Claimant be sanctioned and Respondent be awarded all costs and attorney fees.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies and agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

Prior to the commencement of the second day of hearings, the Arbitrators rendered a decision granting Respondent's Motion to Dismiss on Statute of Frauds grounds. Excluded thereby was that portion of the Statement of Claim alleging the existence and enforceability of an oral agreement between the parties for the payment of \$300,000 to Claimant, performance of which, by its terms, would not occur within one year from its making. The hearings nevertheless continued, since the Panel found that additional claims, beyond those dismissed, remained for determination.

**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. Claimants claims are denied in their entirety.
2. Claimant shall pay Respondent **TWO THOUSAND EIGHT HUNDRED DOLLARS and ZERO CENTS (\$2800.00)**, as partial reimbursement to Respondent for attorney fees expended by Respondent in defense of the claims. In making this assessment, the Arbitrators have decided:
  - (a) that the issue of attorney fees was properly submitted by the parties for arbitral resolution; and
  - (b) that the appropriate standard to apply in assessing attorney fees in this matter is a "bad faith" standard, which Respondents has satisfied.

**FORUM FEES**

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

Nonrefundable filing fee:	\$ 500.00
Hearing Session Deposit (\$750.00 x 4 sessions)	\$3000.00
Pre-Hearing Conference	\$ 300.00
Total Fees:	\$3800.00

1. Claimant paid \$1250.00 and owes \$2550.00.

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

Concurring Arbitrators' Signatures  
Name

Public/Industry

  
Jerome H. Levy

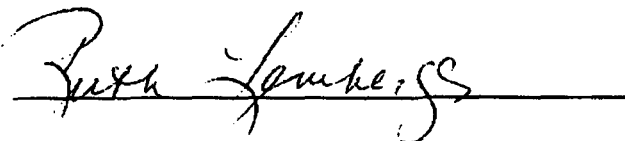
Industry

NASD Date of Decision: June 1, 1995

STATE OF: New York  
COUNTY OF: New York

S.S.:

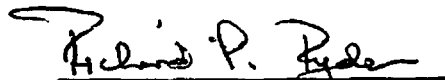
On this <sup>th</sup> 30 day of April, 1995, before me personally appeared Jerome H. Levy known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

A handwritten signature in cursive script, reading "Ruth Lemberger, SS", is written over a horizontal line.

RUTH LEMBERGER  
Notary Public, State of New York  
No. 31-4849888  
Qualified in New York County  
Commission Expires Jan. 8, 1996

Concurring Arbitrator's Signature  
Name

Public/Industry

  
Richard P. Ryder, Esq.

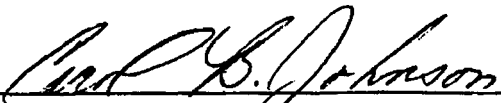
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NASD Date of Decision: June 1, 1995

STATE OF: ~~New York~~ *New Jersey*  
COUNTY OF: ~~New York~~ *Merri*

S.S.:

On this *26<sup>th</sup>* day of *May*, 1995, before me personally appeared Richard P. Ryder, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



CAROL B. JOHNSON  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires July 23, 1996

Concurring Arbitrators' Signatures  
Name

Public/Industry

A handwritten signature in cursive script, appearing to read "Fred Shinagel", written over a horizontal line.

Fred Shinagel

NASD Date of Decision: June 1, 1995



STATE OF: New York  
COUNTY OF: New York

S.S.:

On this <sup>25</sup> day of April, 1995, before me personally appeared Fred Shinagel known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



JOHN M. THOMAS  
Notary Public, State of New York  
No. 51-4210200  
Qualified by New York County  
Commission Expires March 30, 1997

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