

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Francis Xavier Poirier

Case No.  
94-02012

Name of Respondents

James W. Bullard, Jr.  
J.W. Bullard & Co.

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**REPRESENTATION**

For Claimant, Francis Xavier Poirier ("Poirier"), Joshua M. Jaffe, Esq. from the law firm of Singer, Bienstock, Zamansky, Ogele et al located in New York.

For Respondent, James W. Bullard, Jr. ("Bullard"), J.W. Bullard & Co. ("Bullard & Co.") James W. Bullard, Jr. appeared pro se telephonically.

**CASE INFORMATION**

Statement of Claim was filed on May 31, 1994.

Claimant's Submission Agreement was signed on May 26, 1994.

Respondents did not file a Statement of Answer nor a Submission Agreement.

**HEARING INFORMATION**

Hearing Dates/Sessions: 9/21/95 - 1 Session

Hearing Location: The hearing took place at the National Association of Securities Dealers, Inc.'s offices located in New York City, New York.

**CASE SUMMARY**

After numerous discussions with Respondent Bullard, Claimant Poirier alleges that on or about April 23, 1994, Claimant entered into an employment contract with Respondent Bullard & Co. whereby Claimant was to work as a registered representative. Poirier asserts that in return for his services he was to be compensated by Respondent Bullard & Co. according to a graded monthly payout scale. With regard to compensation, Poirier asserts that the employment contract states that he was to receive the following: from \$0.00 to \$25,000.00 gross commissions, 50% of the gross; from \$25,000.00 to \$50,000.00 gross commissions, 55% of the gross; over \$50,000.00 gross commissions, 60% of the gross. Claimant, Poirier further asserts that the employment contract states that Claimant was to be billed for the following

charges against his monthly commission payout: for gross commissions between \$10,000.00 and \$25,000.00, 50% of his "ticket charges", for gross commissions over \$25,000.00, none of the "ticket charges". For the relevant periods Poirier alleges that his gross commissions are as follows: from November 23, 1993 to December 23, 1993, \$34,656.26; from December 25, 1993 to January 24, 1994, \$60,206.13; from January 25, 1994 to February 7, 1994, \$21,621.88. Claimant alleges that Respondent Bullard & Co. did not pay Claimant his wages owed from December 25, 1993 to January 24, 1994 or from January 25, 1994 to February 7, 1994. For this relevant period, Claimant Poirier asserts that \$46,704.62 in wages were owed by Respondent Bullard & Co. Poirier further states that he has only been paid \$6,000.00 and is currently owed a total of \$40,704.62. Claimant asserts that Respondent willfully and intentionally breached the employment contract between Respondent and Claimant by not tendering sums due and owing claimant. Claimant furthers alleges that Respondent Bullard & Co. knowingly and fraudulently entered into the employment agreement and fraudulently induced Claimant, Poirier into employment knowing that it would not compensate Claimant appropriately.

In or about January 1994, Claimant Poirier alleges that he was informed by Respondent Bullard & Co. that 47% of his wages for the period November 23, 1993 to December 23, 1993, a total of \$8,958.64, were being withheld for tax purposes. Claimant further alleges that he has subsequently come to understand that such funds were not used for the payment of taxes and such funds were fraudulently withheld from Claimant. Claimant asserts that Respondent Bullard & Co. was unjustly enriched at Claimant Poirier's expense. Claimant asserts that Respondent Bullard and Respondent John Doe #2 - #10 are jointly and severally personally liable for the amount of \$40,704.62 in unpaid wages due and owing Claimant Poirier because they are the ten largest shareholders of Respondent J. W. Bullard & Co., Inc.

Respondents did not file an answer.

#### **RELIEF REQUESTED**

Claimant requested that Claimant Poirier be awarded \$40,704.62 in past due wages, that Claimant Poirier be awarded and additional \$10,176.16 in liquidated damages pursuant to Section 198(1-A) of the New York State Labor Law, that Claimant be awarded \$8,958.64 which he claimed was fraudulently withheld for tax purposes and that Claimant Poirier be awarded damages of \$59,839.42 with interest, plus all costs, expenses and attorney's fees incurred in connection with this proceeding.

Respondents requested that all claims be dismissed.

#### **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 original remain on file with the NASD.

Claimant Poirier filed a Motion to Preclude on October 3, 1994, which the panel denied at the hearing.

### **AWARD**

After considering the pleading, 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. Respondents J. W. Bullard & Co., Inc and James W. Bullard, Jr. are jointly and severally liable to Claimant in the amount of **FORTY THOUSAND SEVEN HUNDRED AND FOUR DOLLARS AND SIXTY-TWO CENTS (\$40,704.62)**.
2. The Forum Fees shall be split between the parties equally

### **FORUM FEES**

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

Non-refundable filing fees: \$ 500.00

Hearing Session Deposit: \$ 600.00  
(\$600.00 x 1 sessions)

Total Fees: \$1,100.00

- 1) Claimant paid \$1,100.00.
- 2) Respondent jointly and severally owes \$550.00 payable directly to the Claimant.

Concurring Arbitrators' Signatures

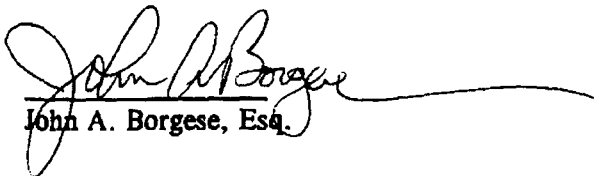
Name	Industry
 John A. Borgese, Esq.	

_____ Edward W. Buckley	Industry
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_____ Herbert Z. Geiger, Esq.	Industry
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**AFFIRMATION**

I, John A. Borgese, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.

  
John A. Borgese, Esq.

Date of Decision: January 18, 1996

Concurring Arbitrators' Signatures

Name

Industry

John A. Borgese, Esq.

Edward W. Buckley  
Edward W. Buckley

Industry

Herbert Z. Geiger, Esq.

Industry

**AFFIRMATION**

I, \_\_\_\_\_, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.

Edward W. Buckley  
Edward W. Buckley

SWORN TO BEFORE ME  
THIS 20<sup>th</sup> DAY OF MAY 1995

Date of Decision: January 18, 1996

JOHN B. AMBRUSO  
Notary Public, State of New York  
No. 01AM5086205  
Qualified in Suffolk County  
Term Expires 4-30-96

Concurring Arbitrators' Signatures

Name

Industry

John A. Borgese, Esq.

Edward W. Buckley

Industry

Herbert Z. Geiger  
Herbert Z. Geiger, Esq.

Industry

**AFFIRMATION**

I, Herbert Z. Geiger, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.

Herbert Z. Geiger  
Herbert Z. Geiger, Esq.

Date of Decision: January 18, 1996