

NASD REGULATION, INC. AWARD

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Cheryl A. Horowitz

95-00631

Name of Respondent

Ladenburg, Thalmann & Company

REPRESENTATION

For Claimant, Cheryl A. Horowitz ("Claimant"), appeared Kenneth A. Lapatine, Esq., of the law firm Camby Karlinsky & Stein located in New York, New York.

For Respondent, Ladenburg, Thalmann & Company ("Respondent"), appeared Robert Weintraub, Esq., in-house-counsel for Ladenburg, Thalmann & Company located in New York, New York.

CASE INFORMATION

Statement of Claim filed: February 15, 1995.

Claimant's Submission Agreement signed on: February 3, 1995.

Statement of Answer filed by Respondent on: April 6, 1995.

Respondent's Submission Agreement signed on: April 6, 1995.

HEARING INFORMATION

Hearing dates/sessions:	November 19, 1996	-	Two Sessions
	January 6, 1997	-	Two Sessions
	January 8, 1997	-	Two Sessions
	January 9, 1997	-	Two Sessions
	January 22, 1997	-	Two Sessions
	January 23, 1997	-	Two Sessions
	March 24, 1997	-	Two Sessions
	March 26, 1997	-	Two Sessions

The hearings were held at the offices of NASD Regulation, Inc., located in New York, New York.

CASE SUMMARY

Claimant alleged that, from July 10, 1987 through May 16, 1994, she was employed by the Respondent. Claimant alleged that, in August 1993, she entered into a compensation agreement (the "Agreement") with Respondent which provided that, in addition to all other compensation, she was to receive 15% of all net cash fees received from the Billings Generation/Yellowstone Energy Limited Partnership Project (the "Billings Project") and 15% of all net deferred fees from the Billings Project when and as they were received by Respondent. Claimant alleged that, pursuant to the Agreement, she received \$120,000.00 in net cash fees and that the deferred fees due to her were calculated to be no less than \$200,000.00. Claimant alleged that, on May 25, 1994, she received a letter from the Respondent's Chairman and Director of Corporate Finance disaffirming its obligation to pay Horowitz the deferred fees and, therefore, by doing so Respondent anticipatorily breached the Agreement.

Claimant also alleged that, in September 1992, she entered into an agreement with Respondent (the "Partnership Agreement") which provided that, in consideration for her services to the Partnership, Respondent agreed to pay her and two others, in addition to all other compensation, an amount equal to 25% of the first \$1,000,000.00 of earnings and 10% of all earnings in excess of \$1,000,000.00 from the Partnership. Claimant alleged that she only received \$4,500.00 under the Partnership Agreement.

Claimant alleged that, on June 28, 1994, she made written demand for an accounting for all sums due under the Partnership Agreement but Respondent has failed to produce an accounting. Claimant further contended that the monies due her pursuant to the Agreement and the Partnership Agreement constitute wages as defined by New York State Labor Law which provides for reasonable attorney fees and liquidated damages equal to 25% of the total amount of wages due.

Respondent maintained that Claimant began working for it in July 1987 as an administrative assistant and that she voluntarily resigned on May 27, 1994, with the title Corporate Finance Associate. Respondent maintained that it paid Claimant \$120,000.00 on the Billings Project as a discretionary bonus after all of the work had been completed. Respondent maintained that the \$120,000.00 was the only bonus payment that was promised to the Claimant and denied any claim for additional compensation.

Respondent maintained that the Partnership Agreement was a private agreement, unknown to the Respondent at the time, by which a group of corporate finance professionals agreed among themselves to allocate and share the "pay-out" portion of certain fees that were received by the group. Respondent maintained that the private Partnership Agreement was dissolved shortly after it was formed and Respondent was never a party to it.

Respondent maintained that Claimant does not state a cause of action for "wages" under New York State Labor Law since deferred fees, as is claimed by the Claimant for the Billings Project, and money due under a partnership agreement, do not constitute wages and furthermore, any failure to pay the Claimant wages was not willful.

Respondent alleged that Claimant received, without objection, the bonus payment made to her, and therefore, is estopped from claiming additional compensation. Respondent maintained that Claimant's claim for deferred fees is void and unenforceable under New York Statue of Frauds. In addition, Respondent maintained that since Claimant voluntarily resigned, she has forfeited any right to the deferred fees or discretionary bonus.

RELIEF REQUESTED

Claimant requested an award in an amount equal to 15% of the deferred compensation due to her under the Billings Project (an amount believed to be no less than \$200,000.00); an accounting and payment of all sums due to Claimant under the Partnership Agreement; liquidated damages under New York State Labor Law in an amount equal to 25% of monies owed to her by the Respondent; costs, interest and attorneys fees.

Respondent requested that the Statement of Claim be dismissed and that costs and disbursements be assessed against the Claimant.

OTHER ISSUES CONSIDERED AND 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Ladenburg, Thalmann & Company, is liable and shall pay to the Claimant, Cheryl A. Horowitz, an amount equal to 7.5% of each of the gross deferred fees on the Billings Project, when and if paid to Ladenburg, Thalmann & Company;
2. Respondent Ladenburg, Thalmann & Company is liable and shall pay to the Claimant, Cheryl A. Horowitz, the sum of \$75,152.00 inclusive of interest;
3. Respondent, Ladenburg, Thalmann & Company, is liable and shall pay to the Claimant, Cheryl A. Horowitz the sum of \$750.00 representing reimbursement of the hearing session deposit paid by the Claimant;
4. All parties shall bear their respective costs, including attorney's fees; and,
5. All other requests for relief are denied.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee previously deposited by the Claimant and have assessed the following forum fees:

Total Forum Fees:	\$12,000.00	(16 Sessions x \$750.00)
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Respondent, Ladenburg, Thalmann & Company, is assessed \$12,000.00 representing the total forum fees due, less \$750.00 paid to Claimant as reimbursement of the hearing session deposit, leaving \$11,250.00 due. Respondent, Ladenburg, Thalmann & Company, is liable and shall pay to NASD Regulation, Inc. the sum of \$11,250.00.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

I, Barbara J. Glenns, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my decision in the above-referenced matter.


Barbara J. Glenns, Esq.

I, Kevin M. Kelly, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my decision in the above-referenced matter.

Kevin M. Kelly, Esq.

I, Clifford J. Friedman, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my decision in the above-referenced matter.

Clifford J. Friedman

Date of Decision: June 26, 1997

ARBITRATORS' SIGNATURES

I, Barbara J. Glenns, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my decision in the above-referenced matter.

Barbara J. Glenns, Esq.

I, Kevin M. Kelly, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my decision in the above-referenced matter.


Kevin M. Kelly, Esq.

I, Clifford J. Friedman, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my decision in the above-referenced matter.

Clifford J. Friedman

Date of Decision: June 26, 1997