

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Jonathan Frank

95-01287

Name of Respondent(s)

Swiss Bank Corporation

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**REPRESENTATION**

For Claimant, Jonathan Frank ("Claimant"), Neal Brickman, Esq. located in New York, N.Y.

For Respondent, Swiss Bank Corp. ("Respondent"), Laura Hoguet, Esq. of the firm Hoguet, Newman & Regal, located in New York, N.Y.

**CASE INFORMATION**

Statement of Claim filed: March 13, 1995

Claimant's Submission Agreement signed on: March 15, 1995

Statement of Answer filed by Respondent: June 6, 1995

Respondent's Submission Agreement signed on: June 5, 1995

**HEARING INFORMATION**

Hearing Date/Sessions: May 13, 1996 - 2 sessions

Hearing Location: The hearings were held at the offices of the National Association of Securities Dealers located in New York, N.Y.

**CASE SUMMARY**

Claimant alleged that he was employed by Respondent from November 9, 1987 through December 20, 1994. Claimant further alleged that at all relevant times hereto, while employed by Respondent, Claimant's compensation package consisted of an annual base salary and a year end bonus (the "bonus").

Claimant contended that on or about December 20, 1994 he was terminated by Respondent without warning or justification and with no indication of prior dissatisfaction. Claimant further contended that Respondent has refused to pay him his bonus for calendar year 1994, an amount which he earned and which is due and owing to him. Claimant alleged that as a term and condition of his employment with Respondent, he was entitled to one week severance pay for each year of service with Respondent. Claimant further alleged that he, therefore, was entitled to receive eight weeks salary which Respondent has refused to pay.

Respondent maintained that consistent with its policies concerning severance pay and the awarding of discretionary incentive bonuses, Respondent paid Claimant severance of \$13,076.93, representing eight weeks of salary, when his employment was terminated. Respondent further maintained that Claimant's employment was at will and, accordingly, could be terminated at any time. Respondent contended that its policy is to pay discretionary incentive bonuses only to employees who are in its active employment on the discretionary incentive bonus payment date which is generally around mid-March of each year. Respondent further contended that because Claimant was not employed by Respondent or any of Respondent's affiliates on the discretionary incentive bonus payment date, he was not eligible to receive and therefore was not paid a bonus on March 15, 1995.

#### **RELIEF REQUESTED**

Claimant requested: \$85,000.00 in actual damages representing his 1994 bonus, interest at the rate of 9% from December 20, 1994, \$13,076.92 in actual damages pursuant to his severance plan, costs and attorney's fees.

Respondent requested that the claims of the Claimant be denied in their entirety.

#### **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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent be and hereby is liable and shall pay to the Claimant \$37,400.00 inclusive of interest.
2. Each party shall bear their own costs, including attorney's fees.
3. All other claims be and hereby are denied.

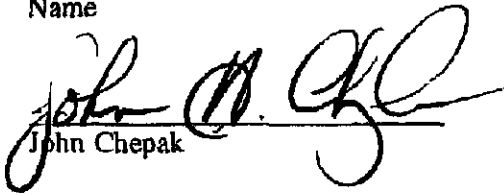
### FORUM FEES

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

Non-refundable filing fee:	\$ 500.00
Two hearing sessions x \$600.00:	\$1,200.00
Total fees assessed:	\$1,700.00

1. Respondent be and hereby is liable for \$1,700 representing forum fees assessed. Respondent shall pay to the Claimant \$1,100.00 as reimbursement of the fee previously deposited and shall pay \$600.00 to the NASD.

Arbitrator's Signature  
Name

  
John Chepak

I, John Chepak, do hereby affirm that this is my decision in the above-captioned matter.



Date of Decision: JUNE 6, 1996

Arbitrator's Signature

Name

James R. Madan

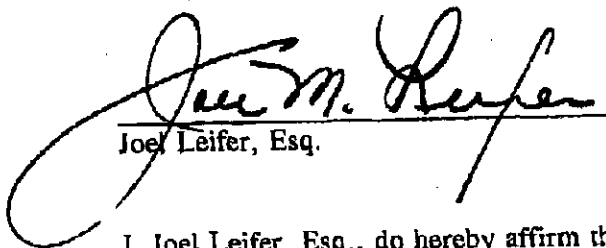
James Madan

I, James Madan, do hereby affirm that this is my decision in the above-captioned matter.

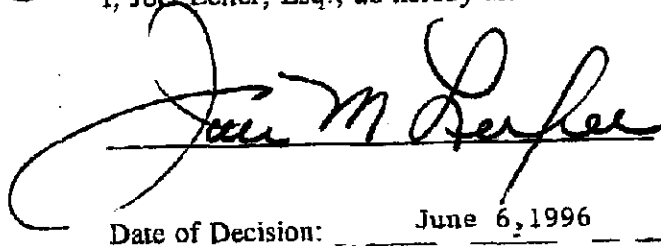
James R. Madan

Date of Decision: JUNE 6, 1996

Arbitrator's Signature  
Name

  
Joel Leifer, Esq.

I, Joel Leifer, Esq., do hereby affirm that this is my decision in the above-captioned matter.

  
Date of Decision: June 6, 1996