

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Berton Seltzberg

95-03470

Name of Respondent

Gabelli & Company, Inc.

REPRESENTATION

Claimant Berton Seltzberg ("claimant") appeared pro se.

For respondent Gabelli & Company, Inc. ("respondent") appeared Dina F. Micalizio, Esq., Associate Counsel of Gabelli & Company, Inc.

CASE INFORMATION

Statement of Claim filed: July 18, 1995.

Claimant's Submission Agreement signed on: July 11, 1995.

Statement of Answer filed: September 12, 1995.

Respondent's Submission Agreement signed on: September 12, 1995.

Statement of Counterclaim filed: September 29, 1995.

Reply to Counterclaim filed: October 10, 1995.

HEARING INFORMATION

Hearing Dates/Sessions:	March 14, 1996	-	Two Sessions
	March 15, 1996	-	Two Sessions

The hearing conducted on March 14, 1996 was held at the City Midday Club located at 140 Broadway, New York, New York. The hearing conducted on March 15, 1996 was held at the

offices of the NASD located in New York, New York.

CASE SUMMARY

Claimant alleged that he was formerly employed as respondent's Chief Compliance Officer and that, upon termination of his employment, respondent failed to comply with the terms of employment which had been agreed to. Claimant further alleged that one of the terms of his employment provided that he was entitled to a guaranteed bonus of 20% of his base salary of \$80,000.00. Claimant asserted that he only received a bonus of \$5,500.00 and that, when he questioned his supervisors about the \$10,500.00 shortfall, he was advised that the \$5,500.00 represented a pro-rata bonus for the period of July 1993 through October 31, 1993. Claimant further asserted that after his resignation, he requested a pro-rata guaranteed bonus to cover the period of November 1, 1993 through June 9, 1994, but that respondent failed to pay the balance of the guaranteed bonus.

Claimant alleged that an additional term of his employment was that he would be reimbursed for all medical insurance premiums paid by him during the first six months of his employment provided that he remain an employee of respondent and that, after the six month period, respondent would pay his medical insurance premiums directly. Claimant further alleged that respondent failed to pay his medical insurance premiums and that, from the end of March 1994 through June 9, 1994, respondent began charging his salary account for medical insurance premiums. Claimant also alleged that, in order to prevent him from pursuing his claims, respondent threatened to retaliate against him.

Respondent maintained that it was under no contractual or other obligation to pay claimant any money for a pro-rated guaranteed bonus and that claimant resigned six months before it paid its annual bonuses to employees. Respondent further maintained that it was under no contractual or other obligation to reimburse claimant any monies for medical insurance premiums paid by him and that its policy is to reimburse medical insurance premiums after an employee has completed one year of service. Respondents also maintained that it has and will continue to provide only truthful information regarding claimant to his current or future employers.

As a counterclaim, respondent alleged that claimant misappropriated documents, notes, correspondence, files and other materials related to respondent's business. Respondents further alleged that claimant breached his fiduciary duty when he disclosed, without authorization, certain confidential information relating to respondent. Respondent also maintained that as part of a scheme to obtain money from respondent, claimant defamed and threatened to damage its business reputation.

In response to the counterclaim, claimant denied taking any employer owned books, records, or documents when he resigned, except for his own home notes and copies of his personal correspondence to which respondent is not entitled. Claimant maintained that he did not breach any fiduciary duty and that he never divulged any confidential information to any of respondent's affiliates. Claimant further denied that he defamed respondent or ever threatened to damage

respondent's business reputation.

RELIEF REQUESTED

Claimant requested that the panel award him the following:

1. pro-rated guaranteed bonus equal to \$10,500.00;
2. reimbursement of medical expenses amounting to \$5,110.01;
3. interest, costs, disbursements, all forum fees; and
4. declaratory judgment prohibiting respondent and/or any of its affiliated entities and principals from communicating with any of claimant's current and/or future employers on matters concerning claimant.

Respondent requested that the Statement of Claim be dismissed. On the counterclaims, respondent requested the following:

1. On its first counterclaim, an order requiring claimant to return all books, records, documents, notes, correspondence, files or other materials relating to Gabelli & Company;
2. On its second counterclaim, (a) all costs and expenses, plus interest, incurred as a result of claimant's unauthorized disclosures of its confidential information; (b) damages in an amount to be proven at the hearing, which amount exceeds \$50,000.00 plus interest; and (c) a permanent injunction barring claimant from disclosing any confidential information relating to Gabelli & Company;
3. On its third counterclaim, (a) damages resulting from the claimant's defamatory statements regarding Gabelli & Company in an amount to be proven at the hearing, which amount exceeds \$50,000.00 plus interest; and (b) a permanent injunction barring claimant from defaming Gabelli & Company;
4. All of its costs and attorneys' fees in connection with this arbitration; and
5. Such other relief as the arbitrators deem just, equitable and proper.

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 original remains 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. Claimant's claim for medical benefits be and hereby is denied.
2. In connection with claimant's claim for a bonus, respondent be and hereby is liable and shall pay claimant the sum of \$10,500.00, plus interest at the rate of 9.5% per annum from the date claimant left respondent's employ until payment of the award.
3. Claimant's request for a declaratory judgement prohibiting respondent and/or any of its affiliated entities and principals from communicating with any of claimant's current and/or future employers on matters concerning him is hereby denied.
4. Claimant is hereby ordered to return all originals and copies of documents containing confidential information concerning the business of Gabelli & Company.
5. All other claims against claimant and respondent be and hereby are dismissed in their entirety.
6. Each party shall bear their own costs, including attorney's fees, except that respondent be and hereby is liable and shall pay claimant the sum of \$1,100.00 to reimburse him for fees previously paid to the NASD.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 non-refundable filing fee submitted by claimant and the \$500.00 non-refundable filing fee submitted by respondent and have assessed the following forum fees:

$$4 \text{ hearing sessions} \times \$600.00 = \$2,400.00$$

Respondent be and hereby is liable for the sum of \$2,400.00, representing the total amount of forum fees assessed. Claimant submitted a hearing session deposit of \$600.00 and respondent submitted a hearing session deposit of \$600.00. Therefore, respondent is liable and shall pay to the NASD the sum of \$1,200.00, representing the amount of forum fees outstanding.


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

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ARBITRATOR'S SIGNATURES

Sarah G. Anderson, Esq.
Industry Arbitrator

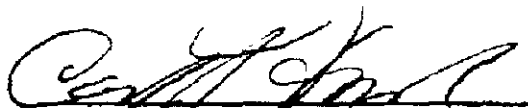
Robina Fedora Asti
Industry Arbitrator



Clifford A. Harwick
Industry Arbitrator

NASD Date of decision: May 6, 1996

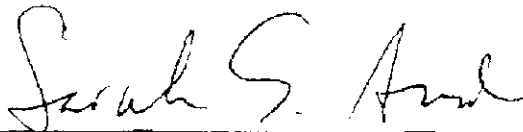
I, Clifford A. Harwick, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law & Rules, that this is my decision in the above-referenced matter.



Clifford A. Harwick

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ARBITRATOR'S SIGNATURES



Sarah G. Anderson, Esq.
Industry Arbitrator

Robina Fedora Asti
Industry Arbitrator

CHIEF ARBITRATOR
Arbitrator

NASD Date of decision: May 6, 1996

I, Sarah G. Anderson, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law & Rules, that this is my decision in the above-referenced matter.




Sarah G. Anderson, Esq.

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ARBITRATOR'S SIGNATURES

Sarah G. Anderson, Esq.
Industry Arbitrator



Robina Fedora Asti
Industry Arbitrator

Clifford A. Harwick
Industry Arbitrator

NASD Date of decision: May 6, 1996

I, Robina Fedora Asti, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law & Rules, that this is my decision in the above-referenced matter.



Robina Fedora Asti