

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

Name of Claimant

Name of Respondent

REPRESENTATION

CASE INFORMATION

HEARING INFORMATION

Hearing Location: NASD Regulation District Office
Philadelphia, PA

CASE SUMMARY

Claimant alleged, among other things, that Respondent filed false and defamatory Uniform Termination Notices, Form U-5s ("U-5"), thus damaging Claimant's career. Claimant alleged that he was employed by Prudential Bache Securities, a predecessor of Respondent, from November 1981 until February 1, 1990. Claimant voluntarily terminated his employment on February 1, 1990. Claimant alleged that Respondent filed a U-5 dated February 16, 1990 with respect to Claimant's termination. Claimant alleged that that U-5 stated Claimant had not been involved in any disciplinary actions; had not been the subject of consumer complaints alleging damages of \$10,000.00 or more, or fraud, or wrongful taking of property, or any action that was settled or decided against the Claimant for \$5,000.00 or more; or fraud or the wrongful taking of property or convicted of, or plead guilty or no contest to a felony or misdemeanor involving investments or an investment-related business, fraud, false statements or omissions, wrongful taking of property, or bribery, forgery, counterfeiting, extortion, gambling or any other felony.

Claimant alleged that he learned that Respondent filed several subsequent U-5s with respect to Claimant which are inconsistent with the U-5 of February 1990. Claimant alleged that the six subsequent U-5s make reference to customer complaints allegedly filed in 1987, 1988, 1993 and 1994. Claimant alleged that the U-5s contain material misrepresentations and false assertions. Claimant alleged that despite repeated requests that the defamatory statements be corrected and/or withdrawn, Respondent has refused. Claimant alleged that he had great difficulty in pursuing his profession in the securities industry prior to the filing of this claim, because the filings repeatedly caused the rejection of Claimant's applications to work in the industry.

Claimant further alleged that the actions by Respondent, and the refusal to remedy the U-5s when apprised of them by Claimant, were and/or are careless, callous, reckless, malicious, outrageous and/or a wanton disregard for truth, fairness and due process under the rules of law, state and federal statutes and the regulatory bodies.

Respondent denied the allegations of wrong-doing as asserted by Claimant. Respondent maintained that U-5 disclosures are absolutely privileged under the law and thus the claims must be dismissed. Respondent maintained that when a registered representative terminates his employment, the brokerage firm is required to file with the Self-Regulatory Organizations ("SRO") a U-5 to disclose apparent misconduct in order to enable the SROs to detect violations and subsequently sanction persons for violations of the rules and other applicable statutes and regulations. Respondent maintained that the U-5s filed relative to Claimant subsequent to his resignation pertain to allegations made by Claimant's customers and the disposition of those complaints. Respondent maintained that in addition, Claimant waived, as part of Claimant's U-4 filing, any claims and released Respondent and its employees from any liability regarding disclosures made to a SRO. In addition, Respondent raised the affirmative defenses of time-barred based on the applicable statute of limitations; joinder of improper parties; absolute or qualified privilege; the affirmative duty of Respondent to amend U-5s; failure to state a claim upon which relief can be granted; lack of causation; estoppel; and that Claimant has no actual or specific damages.

Claimant denied allegations asserted in the Counterclaim and raised the affirmative defenses of failure to mitigate damages; failure to state a claim upon which relief can be granted; lack of damages; waiver; estoppel; promissory estoppel; laches; unclean hands; statute of limitations; failure to supervise; quantum meruit; justification; as well as public policy and statutory limitations.

RELIEF REQUESTED

Claimant requested damages of \$500,000.00; punitive damages; injunctive relief to purge the Form U-5s of specific information; the costs and expenses incurred as a result of this arbitration, and the dismissal of the Counterclaim.

Respondent requested that the Statement of Claim be dismissed and that Respondent be awarded damages of \$70,329.15 on the Counterclaim, as well as sanctions as a disciplinary action against Claimant and his attorney.

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.

The panel considered Respondent's Motion to Dismiss and Motion For Sanctions as well as Claimant's Motion For Default Judgment, Disqualification of Respondent's Counsel and Motion For Sanctions, and the Responses of both parties to each of the aforesaid Motions and denied each of the Motions.

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 shall file amended U-5s with the Central Registration Depository ("CRD") making the following additions, deletions and/or revisions:
 - A. Louis Marinari: Add statement to the existing U-5 filed by Respondent stating that Claimant was not a party to the suit entitled SEC v. PSI, Court Docket 93 CIV 2164, nor did he participate in or become liable under the Claims Settlement Process with Mr. Marinari entered into by PSI.
 - B. Leonard Starer: Add statement to the existing U-5 filed by Respondent stating that Claimant was not a party to the suit entitled SEC v. PSI, Court Docket 93 CIV 2164, nor did he participate in or become liable under the Claims Settlement Process with Mr. Starer entered into by PSI.
 - C. Sylvia Loseke: Respondent should file a revised U-5 stating that the missing funds later found to have been misposted, were funds which were created after Claimant left Respondent's employment and that Claimant was not connected with the misposted funds. Further, if settlement with Ms. Loseke was reached under the Claims Settlement Process, it should be noted that Claimant was not a party to the suit entitled SEC v. PSI Court Docket 93 CIV 2164, and that Claimant did not participate or become liable under the settlement reached with Ms. Loseke with PSI.

- D. Martin Seligman: Respondent should file revised U-5 stating that Claimant was never named as a party in the suit of Seligman v. PSI, nor was any judgment returned against Claimant.
- E. Dorothy J. Miller: Respondent should file revised U-5 indicating that the Award of Arbitrators in the arbitration case of Miller v. PSI dismissed Ms. Miller's claims as to Claimant and that the Award rendered was against PSI only.
2. That Respondent is liable to and shall pay to Claimant the sum of \$55,000.00 plus six percent (6%) interest if the Award is not paid within the time limits as set by the NASD Regulation Code of Arbitration Procedure Rule 10330(h).
3. That Claimant's Request for punitive damages is denied.
4. That Claimant is liable to and shall pay to Respondent the sum of \$21,329.03 representing one-half of the damages awarded in the Keller case and the Jacoby case plus six percent (6%) interest if the Award is not paid within the time limits as set by the NASD Regulation Code of Arbitration Procedure Rule 10330(h). Respondent may use this amount as an offset against the sum awarded to Claimant in section 1 above of this award.
5. That each party shall bear its own costs and expenses with the exception of the Forum Fees as assessed below.
6. That any and all relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

22 sessions x \$1,000.00 = \$22,000.00

Forum Fees assessed against Claimant at \$5,000.00 and against Respondent at \$17,000.00.

Claimant is to receive credit for the \$1,000.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimant of \$4,000.00.

Respondent is to receive credit for the \$750.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment for Respondent of \$16,250.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

2/26/97

Joseph L. Farrell, Jr.
Joseph L. Farrell, Jr., Chairman
Public Arbitrator

Glenn L. Nobel
Industry Arbitrator

DATE

THE ARBITRATOR WHOSE SIGNATURE APPEARS
BELOW, DISSENTS ONLY AS TO THE ALLOWANCE OF
THE COUNTERCLAIM AND ANY DAMAGES AWARDED
THEREON AND CONCURS IN THE REMAINDER OF
THE AWARD

Cynthia Turner
Public Arbitrator

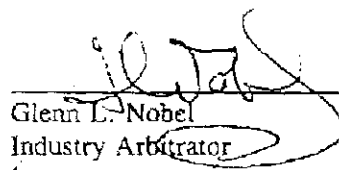
Date Decision Served by NASD Regulation: March 3, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

Joseph L. Farrell, Jr., Chairman
Public Arbitrator

Feb 28, 1997



Glenn L. Nobel
Industry Arbitrator

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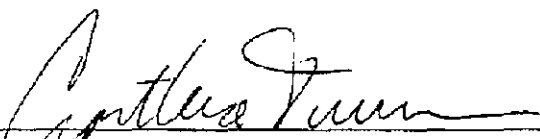
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THE AWARD

2/27/97



Cynthia Turner
Public Arbitrator

Date Decision Served by NASD Regulation: March 3, 1997