

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Lance W. Shields & Lashco Inc.,

Claimants,

v.

No. 95-03674

LIT America Inc., (n/k/a West Jackson, Corp.)
LIT America Holdco Inc., LIT Overseas,
LIT Holding TLC, Michael J. Tario,
Kevin Smith, Michael Usiak, Roger Donnack,
Brian Michelin, Ray Allen, Steven Galvan,
Sharon D. Bell, Sean Barre, Craig Sinclair,
Steven Dennis Balsamo, and David Joseph Vogel.

Respondents.

REPRESENTATION OF PARTIES

Claimant Lance W. Shields ("Shields") and Claimant Lashco Inc. ("Lashco") were represented by Gregory A. Friedman, Esq. of Friedman & Holtz, P.C. located in Chicago.

Respondent LIT America Inc., ("LIT America"), LIT America Holdco Inc., ("Holdco"), Respondent LIT Overseas, ("Overseas"), and Respondent LIT Holding TLC, ("Holding") were represented by Thomas J. McCarthy, Esq. of Jenner & Block located in Chicago.

Respondent Michael J. Tario, ("Tario"), Respondent Kevin Smith, ("Smith"), Respondent Michael Usiak, ("Usiak"), Respondent Roger Donnack, ("Donnick"), Respondent Brian Michelin, ("Michelin"), Respondent Ray Allen, ("Allen"), Respondent Steven Galvan, ("Galvan"), Respondent Sharon D. Bell, ("Bell"), Respondent Sean Barre, ("Barre"), Respondent Craig Sinclair, ("Sinclair"), Respondent Steven Dennis Balsamo, ("Balsamo"), and Respondent David Joseph Vogel ("Vogel") were also represented by Thomas J. McCarthy, Esq. of Jenner & Block located in Chicago.

Respondent Steven Cohen, ("Cohen") was represented by Gary P. Hollander of Potratz & Hollander, P.C. located in Chicago

CASE INFORMATION

The Statement of Claim was filed on or about July 31, 1995.

Claimants filed an Amended Statement of Claim on or about March 5, 1997.

Claimant Lashco's Uniform Submission Agreement was signed on July 20, 1995.

Claimant Shield's Uniform Submission Agreement was signed on July 20, 1995.

Respondents LIT America, Tario, Cohen, Usiak, Smith, Donnicks, Michelin, Bell, Allen, Galvan, Barre, and Sinclair filed an Answer to the Statement of Claim on or about August 2, 1996.

Respondent LIT America's Uniform Submission Agreement was received on June 30, 1998.

Respondent Galvan's Uniform Submission Agreement was signed on August 3, 1998.

Respondent Vogel's Uniform Submission Agreement was signed on June 18, 1998.

Respondent Michelin's Uniform Submission Agreement was signed on August 21, 1998.

Respondent Tario's Uniform Submission Agreement was signed on June 3, 1998.

Respondent Smith's Uniform Submission Agreement was signed on June 23, 1998.

Respondent Balsamo's Uniform Submission Agreement was signed on June 19, 1998.

Respondent Usiak's Uniform Submission Agreement was signed on June 16, 1998.

Respondent Allen's Uniform Submission Agreement was signed on June 23, 1998.

Respondent Barre's Uniform Submission Agreement was signed on June 17, 1998.

Respondent Bell's Uniform Submission Agreement was signed on June 16, 1998.

Respondent Sinclair's Uniform Submission Agreement was signed on June 30, 1998.

Respondent Cohen's Uniform Submission Agreement was signed on June 25, 1998.

Respondents LIT America, Holdco, Overseas, Holding, Balsamo, and Vogel filed an Answer to Claimant's Amended Statement of Claim on or about May 20, 1997.

Respondents Tario, Usiak, Smith, Donnicks, Michelin, Bell, Allen, Galvan, Barre, and Sinclair filed an Answer to Claimant's Amended Statement of Claim on or about May 29, 1997.

Respondent Steven Cohen's Answer to Claimant's Amended Statement of Claim was filed on or about October 13, 1997.

Respondent Steven Cohen's Revised Answer to Claimant's Amended Statement of Claim was filed on or about October 15, 1997.

HEARING INFORMATION

A Prehearing Conference was held on October 13, 1997.

A Prehearing Conference via Telephone was held on July 2, 1998.

The hearing was held on April 26, 1999 thru April 29, 1999 and on May 10, 1999 thru May 11, 1999 for a total of eleven (11) sessions.

CASE SUMMARY

Claimants alleged that respondents orchestrated a series of no-notice resignations, some of them *en masse*, stripping Lashco of virtually all of its floor employees on the Pacific Stock Exchange, Chicago Board Options Exchange, and Chicago Stock Exchange within a two-week period. As a result of these acts, Claimant alleges that Lashco immediately ceased to exist as a profitable and viable company, experiencing an immediate revenue loss in excess of 45%. Lashco's demise, Claimants argued, was the intended result of a carefully planned and executed strategy devised by and among the Respondents, most notably Lashco's former President, Respondent Tario, and LIT America's Executive Vice-President and CFO, Respondent Balsamo.

Immediately after resigning from Lashco, each of Lashco's employees was installed and started conducting business in a new division created especially for them at LIT, Global Partners. With the successful completion of the alleged coup, Respondents had accomplished two significant goals. They had avoided the usual costs and years of work associated with assembling and training a staff and establishing a client base, and they had decimated a major competitor in the marketplace.

Based on these allegations, the Claimants argued breach of fiduciary duty, tortious interference

with prospective economic advantage, tortious interference with contractual relationships, civil conspiracy, violation of just and equitable principals of trade, and breach of contract.

Respondents denied liability for all of the counts alleged based on two theories. First, in Illinois as well as California, the law gives employees the absolute right to move freely from one employer to another without artificial or arbitrary restraints. Second, there was no campaign to destroy Lashco; instead, the floor execution portion of Lashco's business was deteriorating naturally as the result of market forces and the departure of several key clients and other employees long before any of the respondents were fired or left the company. Lashco and its CEO, Claimant Shields, contributed to the disintegration by firing Respondent Tario and by imposing questionable policies on Lashco's floor execution business that Claimant Shields knew many of the employees opposed and believed to be unethical, if not illegal. Many of the respondents would just as soon have stayed at Lashco, but they genuinely believed that the direction of Lashco's business and the direction of its owner and chief executive officer would undermine their reputations and careers. None of the respondents names in this case violated any legal, ethical or regulatory obligation or duty to Lashco.

RELIEF REQUESTED

At hearing, Claimants requested compensatory damages from all Respondents, to be held severally and jointly liable, in the amount of \$8,299,000.00 for lost profits and future profits lost.

The Claimant also requested punitive damages against respondents in an amount to be determined by the panel.

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 NASD Regulation, Inc. Office of Dispute Resolution.

Respondents LIT America, Tario, Cohen, Usiak, Michelin, Bell, Donnicks, Smith, Allen, Galvan, Barre, and Sinclair filed a Motion to Dismiss Arbitration Claim for Lack of Jurisdiction. The motion was denied.

Respondents LIT America, Holdco, Overseas, Holding, Vogel, Balsamo, Tario, Usiak, Michelin, Bell, Donnicks, Smith, Allen, Galvan, Barre, and Sinclair filed a Motion to Dismiss Amended

Arbitration Claim for Lack of Jurisdiction and for Lack of Service with respect to Respondents Holding, Overseas, and Holdco. The motion was denied.

Respondent Holding, Respondent Holdco, and Respondent Overseas did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration. The panel has determined that these respondents are bound by the determination of the arbitration panel on all issues submitted.

Claimant Motion for Default judgment was denied.

Respondent Cohen was dismissed by stipulation with the Claimants. An order was issued by the panel on April 28, 1999.

Respondent Donnack filed for bankruptcy and was dismissed from this action.

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) The panel issues an order of protection for Lashco's financial records;
- (2) Respondent Tario shall be and hereby is liable to Claimants Shields and Lashco in the amount of \$50,000.00 as compensatory damages;
- (3) Respondent LIT America, Respondent Holdco, Respondent Overseas, and Respondent Holding shall be and hereby are jointly and severally liable to Claimants Shields and Lashco in the amount of \$200,000.00 as compensatory damages;
- (4) Claimants' request for punitive damages is denied in its entirety; and
- (5) Parties are responsible for their own attorney's fees.

FORUM FEES

Forum fees are calculated at the rate of \$1500.00 per hearing session and \$300.00 for each pre-

hearing conference. There were eleven (11) hearing sessions x \$1500.00 = \$16,500.00 in forum fees. There were two (2) pre-hearing sessions x \$300.00 = \$600.00. Total forum fees (\$16,500.00 + \$600.00) = \$17,100.00. Pursuant to Rule 10332(b) of the Code, a hearing session is any meeting between the parties and the full panel, including pre-hearing telephone conferences with the arbitrators, which last four (4) hours or less.

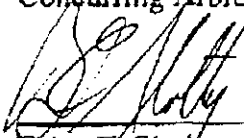
Pursuant to Rule 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500.00 posted by Claimants and shall refund the hearing session deposit in the amount of \$1,500.00 previously deposited by Claimants.

Pursuant to Rule 10332(c) of the Code, Respondent LIT America, Respondent Holdco, Respondent Overseas, and Respondent Holding are liable for and shall pay forum fees in the amount of \$17,100.00.

OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent LIT America has paid to the NASD the member surcharge in the amount of \$1,500.00 previously invoiced. Claimant Shields posted \$1,500.00 in postponement fees. Respondent LIT America posted \$1,500.00 in postponement fees. Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures:



Brian E. Slotky
Chairperson, Industry Arbitrator

6/23/99
Date

Carmen P. Michelotti
Panelist, Industry Arbitrator

Date

Frederic M. Rizzo, CFP
Panelist, Industry Arbitrator

Date

For NASD Regulation use only:

Date award served on parties: _____

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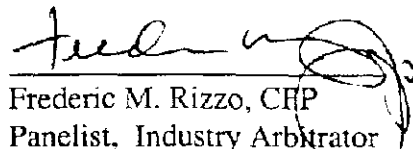
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Brian E. Slotky
Chairperson, Industry Arbitrator

Date

Carmen P. Michelotti
Panelist, Industry Arbitrator

Date



Frederic M. Rizzo, CHP
Panelist, Industry Arbitrator

6-24-99

Date

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