

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.  
AWARD**

In the matter of the Arbitration Between

Name of Claimant(s)

Frank J. Niezgoda

v.

NASD Arbitration  
No. 95-03830

Name of Respondent(s)

Drake Capital Securities, Inc.  
Joseph DiLillo  
Mark Tipton

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**REPRESENTATION**

For Claimant: Edward Gartenberg, Esq.,  
Torgny Nilsson, Esq.  
Burris, Drulias & Gartenberg,  
Los Angeles, California

For Respondents: H Thomas Fehn, Esq.,  
Fields, Fehn & Sherwin,  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: August 7, 1995

Claimant's Submission Agreement signed: August 4, 1995

Joint Statement of Answer filed: October 9, 1995

Respondents' Submission Agreements signed:

Drake Capital: October 6, 1995  
Joseph DiLillo: None submitted

Mark Tipton: None submitted

### **HEARING INFORMATION**

The evidentiary hearing was held in Los Angeles, California, as follows:

January 29, 1996	-	2 sessions
January 30, 1996	-	2 sessions

### **CASE SUMMARY**

Claimant alleged he was tortiously disciplined and discharged from his employment as compliance officer with Drake Capital Securities in violation of public policy. Claimant further alleged breach of contract, breach of the covenant of good faith and fair dealing, and violation of the California Labor Code. Claimant alleged commissions and bonus payments due him.

Respondents denied all the allegations of the claim, and asserted that Claimant resigned his position after the parties were unable to reach an agreement concerning a finder's fee with respect to an offering of Siskon Gold Corporation. Respondents asserted that all allegations concerning Claimant's employment are frivolous.

### **RELIEF REQUESTED**

Claimant requested damages in excess of \$38,000, plus interest, punitive damages, attorney's fees and costs of arbitration.

Respondents requested dismissal of all claims.

### **OTHER ISSUES CONSIDERED AND DECIDED**

This claim was originally filed in the Superior Court of the State of California, County of Los Angeles, Case No. SC035703, on March 21, 1995, and was removed to arbitration by Order of the Court dated July 11, 1995, by Judge Haber.

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. All claims asserted against Respondents DiLillo and Tipton are dismissed in their entirety.
2. Respondent Drake Securities is liable for and shall pay to Claimant the sum of \$9,000 plus interest at 10% per annum from December 15, 1994, until paid, in satisfaction of all claims.
3. The claim for punitive damages is dismissed.
4. The parties shall each bear their respective costs, including attorney's fees.

### FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the NASD shall retain the \$500 non-refundable filing fee paid by Claimant.

Forum fees are to be split equally between the parties as follows:

Total fees:

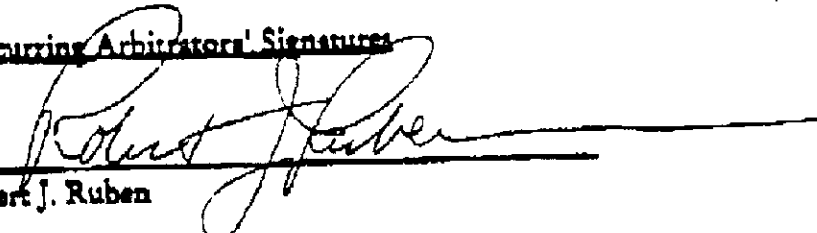
4 hearing sessions @ \$600/session	=	\$ 2,400.00
Claimant's one-half share	=	1,200.00
Credit for deposit	=	<u>600.00</u>
Balance due	=	\$ 600.00
Respondent Drake Capital Securities' one-half share =		\$ 1,200.00

Fees are payable to the NASD, Inc.

### ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Robert J. Ruben	Public Arbitrator
Judge Robert L. Schouweiler	Public Arbitrator
Richard C. Ramos	Industry Arbitrator

Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Robert J. Ruben

\_\_\_\_\_  
Judge Robert L. Schouweiler

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Richard C. Ramos

Date served: 2/27/96

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Robert J. Ruben

*Robert L. Schouweiler*  
Judge Robert L. Schouweiler

\_\_\_\_\_  
Richard C. Ramos

Date served: 2/27/96

Concurring Arbitrators' Signatures

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Robert J. Ruben

\_\_\_\_\_  
Judge Robert L. Schouweiler

  
\_\_\_\_\_  
Richard C. Ramos

Date served: 2/27/96