

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimants

Douglas Bennington, Sandra Carrithers
Richard Daskin, John Engles, James Sampson,
George Selby

vs.

Case No.
95-03895

Name of Respondents

Donaldson Lufkin & Jenrette Securities

REPRESENTATION

For Claimants Douglas Bennington ("Bennington"), Sandra Carrithers ("Carrithers"), Richard Daskin ("Daskin"), John Engles ("Engles"), James Sampson ("Sampson"), and George Selby ("Selby") (collectively "Claimants") appeared Jeffrey L. Liddle, Esq. of the law offices Liddle & Robinson located in New York, New York.

For Respondent Donaldson Lufkin & Jenrette Securities ("Respondent") appeared Ronald L. Green, Esq. of the law offices Epstein Becker & Green, P.C. located in New York, New York.

CASE INFORMATION

Claimants' Joint Statement of Claim was filed on August 9, 1995.
Bennington's Submission Agreement was signed on July 21, 1995.
Carrithers' Submission Agreement was signed on June 13, 1995.
Daskin's Submission Agreement was signed on June 30, 1995.
Engles' Submission Agreement was signed on August 29, 1995.
Sampson's Submission Agreement was signed on June 16, 1995.
Selby's Submission Agreement was signed on June 22, 1995.

Respondent's Statement of Answer was filed on November 9, 1995.
Respondent's Submission Agreement was signed on November 9, 1995.

HEARING INFORMATION

Hearing Dates/Sessions:	September 17, 1996 -	1 session
	July 28, 1997 -	1 session

July 15, 1988	-	2 sessions
August 3, 1998	-	2 sessions
August 4, 1998	-	1 session
August 5, 1998	-	1 session

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimants maintained that they filed this claim to recover damages as a result of Respondent's closure of the Respondent's Public Finance Division ("Division") and the termination of their employment with Respondent. Claimants alleged that Respondent failed to give them proper notice pursuant to the Worker Adjustment and Retraining Notification Act ("WARN"), 28 U.S.C. Sec. 2101 *et seq.* Claimants contended that, in correspondence sent to them, Respondent conceded that the closing of the Division was a "plant closing" under WARN. Claimants also alleged that Respondent failed to pay them severance compensation and that Respondent's severance plans, practices, and policies constituted an employee benefit plan under the Employee Retirement Income Securities Act of 1974.

Respondent contended that it eliminated Division because it had been a poor performer for several years. Respondent also contended that five of the six Claimants received offers of employment almost immediately after the announced elimination of Division. Respondent alleged that, in connection with their termination, each Claimant received gratuitous and extraordinary termination benefits of \$10,000.00 per month for two months. Respondent maintained that this payment was not a concession of the possible applicability of WARN, but was a voluntary transition payment to provide Claimants a financial cushion and to protect Respondent in the event of litigation concerning the applicability of WARN. Respondent also maintained that, although Claimants were not entitled to any severance payments, contractually or otherwise, it offered each Claimant an amount in exchange for a release, but Claimants refused to sign the releases and, therefore, did not receive this additional amount.

RELIEF REQUESTED

Claimants requested compensatory damages of not less than \$314,000.00 in unpaid compensation and \$460,000.00 in unpaid severance benefits, plus liquidated damages, interest, attorneys' fees, and costs.

Respondent requested that the Statement of Claim be dismissed in its entirety and that the panel grant it an award of costs and attorneys' fees.

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.

The arbitrators have considered all submissions regarding Respondent's motion for reconsideration of the panel's ruling denying respondent's motion for a mistrial and have determined that their previous decision is hereby affirmed.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- I. Respondent be and hereby is liable for and shall pay to Claimants the sum of **TWO HUNDRED SIXTY EIGHT THOUSAND FIFTEEN DOLLARS** (\$268,015) to be paid to each of the Claimants as follows:
 - a. Respondent be and hereby is liable for and shall pay to Bennington the sum of **NINETY TWO THOUSAND EIGHT HUNDRED TWENTY SEVEN DOLLARS** (\$92,827.00).
 - b. Respondent be and hereby is liable for and shall pay to Carrithers the sum of **FIFTY THREE THOUSAND SEVEN HUNDRED FORTY DOLLARS** (\$53,740.00).
 - c. Respondent be and hereby is liable for and shall pay to Daskin the sum of **SIXTEEN THOUSAND FOUR HUNDRED FIFTY FOUR DOLLARS** (\$16,454.00).
 - d. Respondent be and hereby is liable for and shall pay to Engles the sum of **THIRTY EIGHT THOUSAND TWO HUNDRED EIGHTY FOUR DOLLARS** (\$38,284.00).
 - e. Respondent be and hereby is liable for and shall pay to Sampson the sum of **THIRTY THREE THOUSAND FOUR HUNDRED FORTY TWO DOLLARS** (\$33,442.00).
 - f. Respondent be and hereby is liable for and shall pay to Selby the sum of **THIRTY THREE THOUSAND TWO HUNDRED SIXTY EIGHT DOLLARS** (\$33,268.00).
2. Respondent be and hereby is liable for and shall pay to Claimants post-judgment interest at the rate of 8 1/2% per annum from October 13, 1998 until the date of payment.
3. Claimants' requests for attorneys' fees and costs are hereby denied.

4. All other requests for relief are hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure ("Code"), Respondent has paid to NASD Regulation, Inc. the \$500.00 member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10205(c) of the Code, the arbitrators have determined that NASD Regulation, Inc. will retain the \$500.00 non-refundable filing fee submitted by Claimants and have assessed the following forum fees:

8 Hearing Session x \$1,000.00 = \$8,000.00

1. Claimants be and hereby are liable for the sum of \$4,000.00, representing one-half of the total amount of forum fees assessed. Claimants previously deposited \$1,000.00 with NASD Regulation, Inc. and, therefore, shall pay the balance of \$3,000.00.
2. Respondent be and hereby is liable for and shall pay the sum of \$4,000.00, representing one-half of the total amount of forum fees assessed.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

Melvin Lyon	-	Public Chairperson
Dorothy F. Gray, Esq.	-	Public Panelist
Marc A. Cohn, Esq.	-	Industry Panelist

CONCURRING ARBITRATOR'S SIGNATURE

Melvin Lyon
Melvin Lyon

Date of decision: October 30, 1998

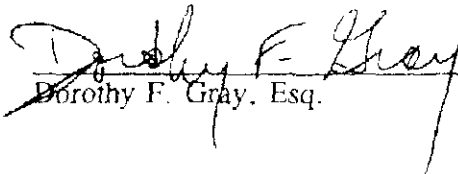
I, **Melvin Lyon**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Melvin Lyon
Melvin Lyon

ARBITRATION PANEL

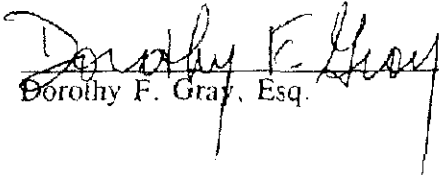
Melvin Lyon	-	Public Chairperson
Dorothy F. Gray, Esq.	-	Public Panelist
Marc A. Cohn, Esq.	-	Industry Panelist

CONCURRING ARBITRATOR'S SIGNATURE


Dorothy F. Gray, Esq.

Date of decision: October 30, 1998

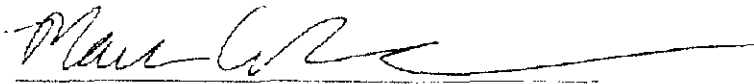
I, **Dorothy F. Gray, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Dorothy F. Gray, Esq.

ARBITRATION PANEL

Melvin Lyon	-	Public Chairperson
Dorothy F. Gray, Esq.	-	Public Panelist
Marc A. Cohn, Esq.	-	Industry Panelist

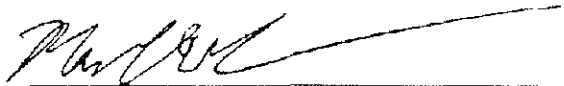
CONCURRING ARBITRATOR'S SIGNATURE



Marc A. Cohn, Esq.

Date of decision: October 30, 1998

I, **Marc A. Cohn, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Marc A. Cohn, Esq.