

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Steven G. Milewicz

95-04033

Names of Respondents

Ladenburg Thalman & Co. Inc.
James Sletteland
Harvey Morgan
Jeffrey Lehman

REPRESENTATION

For Claimant Steven G. Milewicz ("Claimant") appeared Kenneth A. Lapatine of the firm Camhy Karlinsky & Stein, LLP, located in New York, New York.

For Respondents Ladenburg, Thalman & Co., Inc. ("Ladenburg"), Jeffrey Lehman ("Lehman") and Harvey Morgan ("Morgan") appeared Robert B. Weintraub, Esq., General Counsel for Ladenburg located in New York, New York.

For Respondent James Sletteland ("Sletteland") appeared Jan Urbach, Esq. of the firm Satterlee Stephens Burke & Burke located in New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on August 18, 1995. Claimant's Submission Agreement was signed on August 15, 1995.

Respondents Ladenburg, Lehman and Morgan's Statement of Answer and Cross-Claim was filed on November 16, 1995. Respondent Ladenburg's Submission Agreement was signed on November 16, 1995. Respondent Lehman did not sign a Submission Agreement. Respondent Morgan's Submission Agreement was signed on November 16, 1995.

Respondent Sletteland filed a Statement of Answer and Cross-Claim on November 17, 1995. Respondent Sletteland's Submission Agreement was signed on November 16, 1995.

HEARING INFORMATION

Pre-Hearing Conference:

January 5, 1996

One Session

| | | |
|-------------------------|-------------------|--------------|
| Hearing Dates/Sessions: | January 28, 1997 | Two Sessions |
| | January 29, 1997 | Two Sessions |
| | May 21, 1997 | Two Sessions |
| | May 22, 1997 | Two Sessions |
| | May 28, 1997 | Two Sessions |
| | May 29, 1997 | Two Sessions |
| | August 6, 1997 | Two Sessions |
| | September 8, 1997 | Two Sessions |
| | September 9, 1997 | Two Sessions |

The pre-hearing conference was held telephonically. The hearings were conducted at the offices of the NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that from July 1991 through April 1994 he was employed by Respondent Ladenburg. Claimant further alleged that he was hired at a "salary" of \$50,000.00 per year.

Claimant also alleged that, in August 1993, he entered into a compensation agreement with Respondent Ladenburg which provided that, in addition to all other compensation, he was to receive a bonus equal to 12.5% of all net cash fees received from the Billings Generation / Yellowstone Energy Limited Partnership Project (the "Billings Project") and 12.5% of all net deferred fees from the Billings Project when and as they were received by Ladenburg. Claimant asserted that, pursuant to this agreement, he was allocated \$200,000.00 in net cash fees, of which \$111,920.00 was improperly withheld by Ladenburg to offset an alleged deficiency in his draw account. Claimant further asserted that Ladenburg has disaffirmed its obligation to pay Claimant the deferred fees and has wrongfully applied the cash fees to pay the alleged deficit in his draw account because he was to be on salary.

Claimant asserted that, in September 1992, he entered into an agreement with Respondents which provided that, in connection with the creation of the LMS Group (an arrangement formed by Lehman, Morgan and Sletteland), Respondents agreed to allocate a bonus pool, to be paid to him and two others, in addition to all other compensation, an amount equal to 25% of the first \$1,000,000.00 of earnings and 10% of all earnings in excess of the first \$1,000,000.00 from the LMS Group. Claimant contended that he was to receive 50% of the bonus pool. Claimant further contended that after one year, the LMS Group earned \$1,182,371.00, and that accordingly, the bonus pool should have consisted of \$268,237.00, of which he should have been paid \$134,118.50. Claimant alleged that he was paid only \$9,000.00 from the LMS Group.

Claimant also contended that when he resigned from Ladenburg, Ladenburg improperly withheld excess pension payments made on his behalf in the amount of \$7,306.00 to offset an alleged deficit in his draw account. Claimant claims that he was entitled to such sums.

Respondents Ladenburg, Lehman & Morgan maintained that Claimant was hired on a "draw" of \$50,000.00 per year, which amounts were required to be paid back by Claimant if and when he was allocated additional bonus compensation, and that all amounts allocated to, but withheld from Claimant were properly withheld against his accumulated draw. Respondents further maintained that Claimant was not promised any additional compensation above the draw.

Respondents Ladenburg, Lehman & Morgan also maintained that the \$200,000.00 Claimant was allocated from the Billings Project was the only bonus payment that was promised to Claimant, and denied any claim for additional compensation. Respondents contended that Claimant, by having voluntarily resigned from Ladenburg in April 1994, forfeited any right he otherwise might have had to receive any "deferred fees" from Ladenburg.

Respondents Ladenburg, Lehman & Morgan further contended that Claimant was not promised any compensation from the LMS Group. Respondent Ladenburg also contended that it had no knowledge of what the arrangements were within the LMS Group. Respondents initiated a cross-claim against Respondent Sletteland, wherein they asserted that Sletteland is liable to Ladenburg because any obligations of the LMS Group were separate from Ladenburg, and Sletteland could not represent and had no authority to represent that obligations incurred by LMS were obligations of Ladenburg.

Respondent Sletteland maintained that Claimant was promised only a \$50,000 "draw," not a salary, and he was not promised any additional compensation. Respondent further maintained that Claimant is not due any money in connection with the Billings Project. Respondent Sletteland also maintained that Claimant is not due any money in connection with the 401K plan offered by Ladenburg. Respondent Sletteland contended that Respondent Ladenburg has not breached any agreement with Claimant nor failed to pay any amounts due Claimant. Respondent Sletteland initiated a cross-claim against Respondent Ladenburg on the basis of contractual and/or common law indemnity and/or appointment, and/or breach of contract.

RELIEF REQUESTED

Claimant requested: (1) actual damages in the amount of \$142,775.00, plus interest thereon to date of payment; (2) actual damages in the amount of \$121,788.00, plus interest at money market rates from July 28, 1993; (3) actual damages of \$141,000 plus interest calculated at the rate of Prime of the Canadian Commercial Bank of Commerce plus two percent (2%) adjusted and compounded quarterly from July 28, 1993 to date of payment; (4) actual damages in the amount of \$7,306.00 plus interest at the rate of approximately ten (10%) percent per annum from April 1993 to date of payment; (5) actual damages of \$522,244.00 with interest to date of payment; (6) punitive damages in the amount of \$2,000,000; (7) reasonable attorneys fees; (8) liquidated damages equal to twenty-five (25%) percent of the total amount of wages lost; (9) and for such other and further relief as the panel deems just and proper.

Respondents Ladenburg, Lehman and Morgan requested: (1) claims against them be dismissed in their entirety; (2) that Respondent Ladenburg's cross-claims against Respondent Sletteland be granted if Claimant is granted an award against Ladenburg; (3) costs, forum fees, hearing fees, attorneys' fees and any other and further relief as the panel deems just and proper.

Respondent Sletteland requested: (1) claims against him be dismissed in their entirety; (2) that in the event Respondent Sletteland is found liable, judgement over against co-respondent Ladenburg for all or part of the judgement that Claimant may recover against Respondent; (3) costs, forum fees, hearing fees, attorneys' fees, and any other and further relief as the panel deems just 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 originals remain on file with the NASD.

Respondents Morgan and Lehman dropped from the case prior to hearings.

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 Sletteland is hereby not liable for any of the claims against him.
2. Respondent Ladenburg is hereby liable and shall pay Claimant the sums of \$111,920.00 for salary compensation, \$7,306.00 for excess pension, and \$125,000.00 from LMS, for a total of \$244,226.00.
3. All claims for interest and labor law compensation are hereby denied.
4. Deferred fees from the Billing Company are hereby denied.
5. All cross-claims are hereby dismissed in their entirety.
6. All claims for punitive damages are hereby denied.
7. All requests for attorneys fees are hereby denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD Regulation, Inc. will retain the \$250.00 non-refundable filing fee submitted by Claimant, the \$500.00 non-refundable filing fee submitted by Respondent Ladenburg, and the \$500.00 non-refundable filing fee submitted by Respondent Sletteland, and have assessed the following forum fees:

| | | |
|---------------------------------------|---|-------------|
| One pre-hearing conference x \$300.00 | = | \$ 300.00 |
| 18 Hearing Sessions x \$1,000.00 | = | \$18,000.00 |
| Total Forum Fees | = | \$18,300.00 |

The arbitrators have determined that the Claimant shall be responsible for one-third of total forum fees, Respondent Ladenburg shall be responsible for one-third of total forum fees, and Respondent Sletteland shall be responsible for one-third of total forum fees.

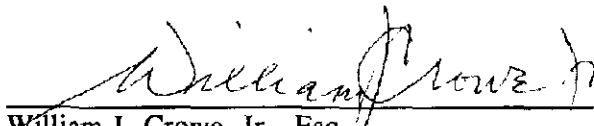
1. Claimant shall pay the sum of \$6,100.00, representing one-third of the total forum fees assessed. Claimant previously deposited \$1,250.00 with NASD Regulation, Inc., and, therefore, Claimant shall pay the balance of \$4,850.00 to NASD Regulation, Inc.
2. Respondent Ladenburg shall pay the sum of \$6,100, representing one-third of the total forum fees assessed to NASD Regulation, Inc.

3. Respondent Ladenburg be and hereby is liable and shall pay the sum of \$500.00 for the Member Surcharge. Respondent Ladenburg has submitted the sum of \$500.00 and, therefore, does not owe the Member Surcharge.
4. Respondent Sletteland shall pay the sum of \$6,100.00, representing one-third of the total forum fees assessed to NASD Regulation, Inc. Respondent Sletteland previously deposited \$1,500.00 with NASD Regulation, Inc., and, therefore, Respondent Sletteland shall pay the balance of \$4,600.00 to NASD Regulation, Inc.

Fees are payable to the NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

I, William J. Crowe, Jr., 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.



William J. Crowe, Jr., Esq.
Industry Chairperson

I, C. Anthony Bell, 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.

C. Anthony Bell
Industry Panelist

I, Randy P. Glasser, 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.

Randy P. Glasser, Esq.
Industry Panelist

Date of Decision: October 28, 1997

3. Respondent Ladenburg be and hereby is liable and shall pay the sum of \$500.00 for the Member Surcharge. Respondent Ladenburg has submitted the sum of \$500.00 and, therefore, does not owe the Member Surcharge.
4. Respondent Sletteland shall pay the sum of \$6,100.00, representing one-third of the total forum fees assessed to NASD Regulation, Inc. Respondent Sletteland previously deposited \$1,500.00 with NASD Regulation, Inc., and, therefore, Respondent Sletteland shall pay the balance of \$4,600.00 to NASD Regulation, Inc.

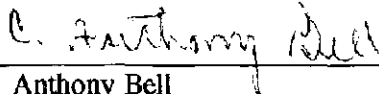
Fees are payable to the NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

I, William J. Crowe, Jr., 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.

William J. Crowe, Jr., Esq.
Industry Chairperson

I, C. Anthony Bell, 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.



C. Anthony Bell
Industry Panelist

I, Randy P. Glasser, 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.

Randy P. Glasser, Esq.
Industry Panelist

Date of Decision: October 28, 1997

3. Respondent Ladenburg be and hereby is liable and shall pay the sum of \$500.00 for the Member Surcharge. Respondent Ladenburg has submitted the sum of \$500.00 and, therefore, does not owe the Member Surcharge.
4. Respondent Stetteland shall pay the sum of \$6,100.00, representing one-third of the total forum fees assessed to NASD Regulation, Inc. Respondent Stetteland previously deposited \$1,500.00 with NASD Regulation, Inc., and, therefore, Respondent Stetteland shall pay the balance of \$4,600.00 to NASD Regulation, Inc.

Fees are payable to the NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

I, William J. Crowe, Jr., 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.

William J. Crowe, Jr., Esq.
Industry Chairperson

I, C. Anthony Bell, 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.

C. Anthony Bell
Industry Panelist

I, Randy P. Glasser, 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.

Randy P. Glasser, Esq.
Industry Panelist

Date of Decision: October 28, 1997