

NASD REGULATION, INC.  
AWARD

---

In the Matter of the Arbitration Between

Name of Claimant

Neal Scott

95-04242

Name of Respondents

Emanuel & Company  
Eric Emanuel

---

**REPRESENTATION**

For Claimant Neal Scott ("Scott") appeared John E. Lawlor, Esq., a sole practitioner with offices located in Mineola, New York.

Respondent Emanuel & Company ("E&C") did not enter an appearance in this matter.

For Respondent Eric Emanuel ("Emanuel") appeared Ray Beckerman of the law offices of Gallent Dreyer & Berkey, LLP, located in New York, New York.

**CASE INFORMATION**

Scott's Statement of Claim was filed on August 29, 1995.

Scott's Submission Agreement was signed on March 27, 1995.

E&C did not file a Statement of Answer or a signed Submission Agreement.

Emanuel's Statement of Answer was filed on November 15, 1995.

Emanuel's Submission Agreement was signed on November 15, 1995.

**HEARING INFORMATION**

Hearing Date/Sessions:

June 24, 1998

Two Sessions

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

**CASE SUMMARY**

Scott alleged that, as a result of claims made against him and the Respondents in an earlier arbitration, he and E&C were found jointly liable for obligations totalling \$132,564.49. Scott asserted that, in August, 1991, he entered into an agreement under which certain revenue would be withheld from his commissions and used to reduce his \$66,282.24 portion of the obligation. Scott alleged that the Respondents withheld commissions, in the amount of \$66,282.24, in accordance with this agreement. Scott alleged that the monies withheld were not used to pay the outstanding obligation, but rather were used for corporate purposes. Scott further alleged that the commissions were diverted, misdirected, and/or embezzled at the direction of Emanuel. Scott alleged that the Respondents violated the Business Corporation Law of the State of New York by withholding wages. Scott further alleged that Emanuel, as a partner of E&C, is liable for the debts and obligations of E&C.

Emanuel maintained that he was dismissed as a party from the arbitration in which Scott and E&C were found liable. Emanuel stated that the assets and liabilities of E&C were sold and transferred to the 401 Corporation. Emanuel asserted that the amount of money withheld from Scott totaled \$34,772.25, not \$66,282.24. Further, Emanuel asserted that he was not aware of an agreement between Scott and E&C. Emanuel maintained that the award in the earlier arbitration was never presented for payment, and, therefore, Scott was allowed to go to another firm without delay to his U-5 because of possible monies owing. Emanuel maintained that the award was presented to E&C for payment, and when E&C was found to be insolvent, repayment was requested from Scott.

#### **RELIEF REQUESTED**

Scott requested compensatory damages in the amount of \$66,282.24, plus interest, costs, disbursements, and such other and further relief as the arbitrators deem appropriate.

Emanuel requested that the Statement of Claim be dismissed in its entirety.

#### **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 original remains on file with the NASD.

The panel made the following determinations concerning E&C who did not file a Statement of Answer or a Submission Agreement and did not appear at the hearing in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the arbitrators found subject matter jurisdiction over this entire controversy.
2. The panel found that E&C was a member of the NASD at the time this controversy arose. Accordingly, the panel found jurisdiction over E&C pursuant to Rule 10201 of the Code.
3. The panel found that E&C was required to file a Statement of Answer and

Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon E&C pursuant to Rule 10314 (a) of the Code.

4. In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation provided E&C with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further determined to proceed with the hearing without E&C whose absence was unexcused.

### **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. Scott's claims are hereby denied in their entirety.
2. All other requests are hereby denied.

### **OTHER COSTS**

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Emanuel & Company shall pay to NASD Regulation, Inc. the \$300.00 past due member surcharge previously invoiced.

### **FORUM FEES**

Pursuant to Rule 10205(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$500.00 non-refundable filing fee paid by Scott and have assessed the following Forum Fees:

2 Hearing session deposits x \$600.00	=	\$1,200.00
Total Forum Fees	=	\$1,200.00


1. Scott is hereby liable for the sum of \$600.00, representing one-half of the total forum fees assessed. Scott previously deposited \$600.00 with NASD Regulation, Inc., and, therefore, no remittance is required.
2. Emanuel & Company is hereby liable for and shall pay the sum of \$300.00, representing one-fourth of the total forum fees assessed.
3. Emanuel is hereby liable for and shall pay the sum of \$300.00, representing one-fourth of the total forum fees assessed.

Fees are payable to NASD Regulation, Inc.

**ARBITRATION PANEL**

William J. Crowe, Jr., Esq.	-	Industry Chairperson
Steven M. Bloom, PhD	-	Industry Arbitrator
John J. Witkowski, Jr., Esq.	-	Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**

  
\_\_\_\_\_  
William J. Crowe, Jr., Esq.  
Chairperson - Industry Arbitrator

Date of decision: July 24, 1998

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.

**ARBITRATION PANEL**

William J. Crowe, Jr., Esq.	-	Industry Chairperson
Steven M. Bloom, PhD	-	Industry Arbitrator
John J. Witkowski, Jr., Esq.	-	Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**



Steven M. Bloom, PhD  
Industry Arbitrator

Date of decision: July 24, 1998

I, **Steven M. Bloom, PhD**, 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.

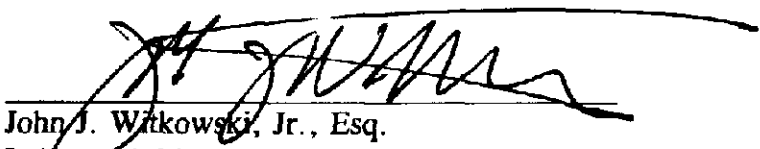


Steven M. Bloom, PhD

**ARBITRATION PANEL**

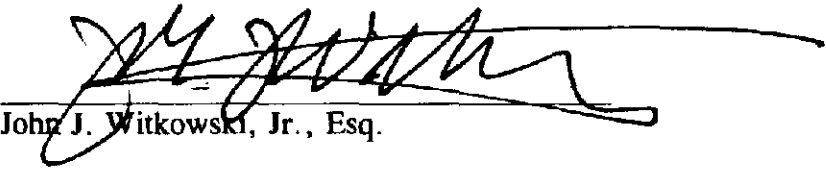
William J. Crowe, Jr., Esq.	-	Industry Chairperson
Steven M. Bloom, PhD	-	Industry Arbitrator
John J. Witkowski, Jr., Esq.	-	Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**

  
\_\_\_\_\_  
John J. Witkowski, Jr., Esq.  
Industry Arbitrator

Date of decision: July 24, 1998

I, **John J. Witkowski, 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.

  
\_\_\_\_\_  
John J. Witkowski, Jr., Esq.