

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

James Fiore
Richard Van Steen
Patrick Donelan
David Steele

95-04672

Name of Respondents

D. Blech & Company, Inc.
David Blech

REPRESENTATION

For Claimants James Fiore ("Fiore"), Richard Van Steen ("Van Steen"), Patrick Donelan ("Donelan"), and David Steele ("Steele"): Bradley Schram, Esq. of Hertz, Schram & Saretsky, P.C., West Palm Beach, Florida.

For Respondents D. Blech & Company, Inc., and David Blech ("Blech"): L. Van Stillman, Esq., Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed on: October 2, 1995.

Submission Agreements signed by Claimants Donelan and Steele on: September 19, 1995.
and by Claimants, Van Steen and Fiore on: September 20, 1995.

Statement of Answer filed on: April 23, 1996.

Respondents' Submission Agreement and Corporate Acknowledgement signed on: May 2, 1996

HEARING INFORMATION

On October 14, 15, and 16, 1996 in Fort Lauderdale, Florida, hearings lasting (6) six sessions were conducted.

CASE SUMMARY

Claimants alleged breach of contract and fraud against the Respondents, D. Blech & Company, Inc. and David Blech. Claimants further alleged that Respondents guaranteed a certain compensation package to the Claimants which included, among other things, that (1) Respondents would pay Claimants guaranteed salaries for 24 months totalling \$2,232,000; (2) Respondents would pay Claimants any commissions earned over and above their guaranteed salaries; and (3) Respondents would pay Claimants 50% of warrants earned on private

placements and 50% of 80% of warrants earned on public offerings. Claimants argued that Respondents breached the guaranteed contract in August 1994, approximately six months after the Claimants commenced employment at D. Blech & Co., and that they were fraudulently induced to enter into the contract with the Respondents. Claimants claimed that Respondents failed to comply with the express terms of the written compensation agreement and alleged the representations were material and were false when made with the purpose of inducing Claimants to join the Company. Claimants alleged they are entitled to further compensation because they lost certain clients and saw their production drop dramatically because of the misrepresentations made by the Respondents.

Respondents denied all allegations of wrongdoing contained in the Statement of Claim. Respondent, David Blech, denied that he was personally liable under the obligations as alleged in the Statement of Claim. Respondents assert the following affirmative defenses: impossibility of performance, the doctrine of unclean hands, doctrines of waiver and estoppel, and fraudulent misrepresentation of employment agreement information. Respondents further argued that Claimant's claims regarding any damages, other than for breach of contract are barred by the Economic Loss Rule which bars all tort claims for economic loss without personal injury or property damage.

RELIEF REQUESTED

Claimants requested the following damages:

1. Actual Damages in the amount of \$1,800,000.00 in unpaid guaranteed salary, \$27,000.00 in unpaid commissions, and \$337,371.88 in unpaid warrants.
2. Consequential Damages in the amount of \$2,176,073.00, \$417,281.56 in prejudgment interest, \$2,000,000.00 in punitive damages, \$2,230,049.50 in attorney's fees, plus costs and expenses.

Respondents requested that the Panel dismiss the Statement of Claim with prejudice, and that they be awarded their costs, disbursements, and reasonable attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

1. On October 8, 1996, Respondents made a Motion to Disqualify the law firm of Hertz, Schram & Saretsky, P.C. and to Stay the proceeding. After careful Consideration and deliberation with respect to the Motions and the Response received from the Claimants, the Panel decided to deny the Motions and to proceed with the hearing.
2. On October 15, 1996, the NASD received, via facsimile, a request, directed to the Arbitrators, to stay the proceeding for a period of 60 days pending the resolution of the criminal matter involving Claimants' former attorney. The Motion requested that the stay be granted should the Panel determine that evidence relating to the criminal matter would be admissible. The Arbitrators carefully reviewed and considered the request to stay and heard argument on the issue from both Claimants and Respondents and decided to deny the request, in as much as the Panel determined that such evidence is not relevant or admissible in this case, and that the Panel had not and did not intend to admit into evidence any material or testimony regarding the criminal matter.

3. During the proceeding, on October 16, 1996, Respondents informed the Panel (and provided it with a facsimile of a summons) that an Involuntary Petition had been filed in the United States Bankruptcy Court, southern District of New York, against Respondent, David Blech on October 15, 1996. The foregoing automatically stayed the proceeding with respect to Respondent, David Blech. The Panel, after hearing argument from both sides on the issue decided to proceed with the hearing against the firm only, D. Blech & Company, Inc.

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 and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, D. Blech & Company, Inc. is found liable, and shall pay to Claimants amounts as follows:
 - to Claimant, James Fiore-\$112,000;
 - to Claimant, Richard Van Steen-\$100,000;
 - to Claimant, Patrick Donelan-\$80,000;
 - to Claimant, David Steele-\$80,000.00.
2. Respondent, D. Blech & Company, Inc. shall also pay each Claimant interest on the above amounts at the Florida Statutory rate from September of 1994, to the date of payment of the Award.
3. Respondent, D. Blech & Company, Inc. shall also pay to Claimants, attorneys' fees to be determined by a court of competent jurisdiction.
4. Claimants' request for punitive damages is hereby denied.
5. All other claims are denied.

OTHER COSTS

Other than the forum fees detailed below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 10332(c) (formerly Section 43c) of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$6,000.00 (six (6) hearing sessions X \$1,000.00).

1. Respondent, D. Blech & Company, Inc. is hereby assessed Forum Fees in the amount of \$6,000.00, \$1,000.00 of which shall be paid directly to Claimants, leaving a balance of \$5,000.00 payable to the NASD.
2. The NASD is retaining the \$1,000.00 hearing session deposit previously paid by the Claimants in partial satisfaction of the forum fees.
3. The NASD shall retain the \$500.00 non-refundable filing fee previously paid by the Claimants.
4. Respondent, D. Blech & Company, Inc. shall refund the Claimants the \$500.00 non-refundable filing fee.
5. Respondent, D. Blech & Company, Inc. shall also pay the \$500.00 Section 10333 Member Surcharge due to the NASD.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

Lionel P. Greenbaum

Industry / Chairperson

/s/

Charles Steffens

Industry/Panelist

/s/

Irving Hanzman

Industry/Panelist

Date of Decision: November 29, 1996