

AWARD

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

James Nellis

vs.

Case No.
95-04758

Name of Respondents

D. Blech & Co., Inc.
David Blech

REPRESENTATION

For Claimant, James Nellis ("Claimant"), Howard Hertz, Esq., from the law firm of Hertz, Schram & Saretsky, P.C. located in Bloomfield Hills, Michigan.

For Respondents, D. Blech & Co., Inc. ("D. Blech") and David Blech ("Blech") (collectively "Respondents"), L. Van Stillman, Esq. located in Boca Raton, Florida.

CASE INFORMATION

Statement of Claim was filed on October 3, 1995.

Claimant's Submission Agreement was signed on September 22, 1995.

Amended Statement of Claim was filed on December 1, 1995.

Joint Statement of Answer was filed by D. Blech and Blech on July 1, 1996.

Respondents D. Blech and Blech did not execute Submission Agreements.

HEARING INFORMATION

Hearing Dates/Sessions: April 29, 1997 - 2 sessions
 July 9, 1997 - 3 sessions

Hearing Location: NASD Regulation offices located in Atlanta, Georgia.

CASE SUMMARY

Claimant states that Blech, a member of the Forbes 400 wealthiest Americans, is a well-known venture capitalist and in 1990 founded the investment banking firm, D. Blech & Co., Inc., which in 1993 had revenues totalling more than \$18 million and 95 employees in its New York offices. Claimant also states between December 1993 through April 1994, Blech aggressively recruited leading brokers, like Claimant, in various cities who were with major Wall Street firms.

Claimant alleges that Blech offered these brokers highly lucrative contracts which included a minimum guaranteed compensation which was personally guaranteed by Respondent David Blech in writing.

Claimant also alleges that Blech assured each broker that they would not be required to sell Blech's biotech stocks but that he wanted them to continue doing what they were doing at their current firms.

Claimant states that in November 1993, he was a successful broker at Bear Stearns & Co., Inc.'s Atlanta office. Claimant also states that at the request of a former colleague, who was a D. Blech branch manager in Atlanta, Claimant met with Blech concerning joining D. Blech. Claimant alleges that during his meeting with Blech, Blech represented that: (1) he would pay Claimant a guaranteed draw of \$300,000 per year for two years, plus certain warrants and other incentives; (2) that D. Blech was a full-service brokerage firm which offered products that a major wirehouse would offer; (3) that D. Blech did not require its brokers to sell biotech stocks or new issues; (4) that Claimant could continue to service his clients in the same manner he did at his current firm; (5) that D. Blech would provide Claimant with two cold callers at the firm's expense; and (6) that Blech was worth \$300 million and that he would personally guarantee Claimant's contract.

Claimant also alleges that he joined D. Blech and a written contract was signed by both Respondents. Claimant further alleges that soon after he joined the firm, he discovered that D. Blech was not a first-rate, full-service brokerage firm with a state-of-the-art back office system. Claimant alleges that Blech placed inappropriate and intolerable pressure on brokers not to accept orders to sell Blech's biotech stocks and manipulated the price of the stock.

Based upon D. Blech's practices, Claimant states that he negotiated a settlement to leave the firm and compromised his entitlement under his employment contract with D. Blech and Blech. Under the settlement, Blech personally and individually agreed to pay Claimant \$225,000. Claimant states that Blech breached this settlement agreement and Claimant seeks damages under several theories.

In their Answer, Respondents deny all allegations of wrongdoing contained in the Statement of Claim and Blech denies that he is personally liable as alleged by Claimant. Respondents assert seven affirmative defenses and argue that the claims against Blech should be dismissed as Blech was acting in his corporate capacity and not in his individual capacity. At the hearing, Respondents also alleged as a defense to enforcement of the August 23, 1994 termination agreement, that Respondents were subjected to extreme duress and extortion in obtaining their signatures.

RELIEF REQUESTED

In his Statement of Claim, Claimant requests an award of \$416,664 in compensatory damages, plus unpaid warrants and other compensation, pre-judgment interest at the legal rate from the date owed until the date of the award, attorney's fees and costs incurred by Claimant and punitive damages. At the hearing, Claimant specified the total amount requested as \$1,339,288.50.

Respondents request that the Statement of Claim be dismissed with prejudice and that Respondents be awarded their costs, disbursements and reasonable attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed to receive conformed copies of the Award while the original remain on file with the NASD Regulation, Inc.

The arbitrators considered Claimant's Motion to Bar Respondents from Presenting Any Defenses and Compelling the Production of Documents as well as an oral objection to consideration of Respondents'

Answer on the grounds that it had been untimely filed. The Arbitrators have denied Claimant's written and oral motions.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

The Arbitrators find as to Nellis's Statement of Claim and Amended Statement of Claim:

1. Breach of December 28, 1993 contract claim is granted as specified in more detail below.
2. Beach of August 23, 1994 termination agreement is denied.
3. Fraud claim is denied.

Breach of December 28, 1993 Contract

Specifically, the Arbitrators find that Respondent D. Blech & Co., Inc. breached its employment contract with Claimant and is liable for damages as specified below and that Respondent David Blech personally guaranteed paragraph 1 of that contract and is liable for damages as specified below. Accordingly, the following Relief is ordered:

1. Respondents are jointly and severally liable for damages of \$404,163.00 on paragraph 1 of the contract;
2. Respondent D. Blech & Co., Inc. is liable for damages of \$17,902.50 on paragraph 3 of the contract;
3. Claimant's request for pre-Award interest, attorneys' fees and punitive damages is rejected. Claimant is awarded the filing fee paid by him jointly and severally against Respondents. Otherwise the NASD forum fees and other NASD fees are to be assessed jointly and severally against Respondents.
4. Otherwise, the parties are directed to each bear their own legal fees and expenses of litigation.

FORUM FEES

Pursuant to Section 10332 of the *Code of Arbitration Procedure*, the following Forum Fees are assessed jointly and severally against Respondents.

| | |
|----------------------------|---|
| Non-refundable Filing Fee: | \$500.00 |
| Hearing Session Fees: | \$3750.00 (5 sessions @ \$750.00 per session) |
| Total Fees: | \$4250.00 |

1. Claimant is assessed \$45.00 for duplication of tapes. Claimant previously paid \$1,545.00 and is entitled to a refund in the amount of \$1,500.00.

2. Respondents shall satisfy the fees assessed by reimbursing Claimant \$1, 500.00 and remitting the balance of \$2,750.00 to NASD Regulation, Inc.

Fees are payable to the NASD Regulation, Inc.

ARBITRATION PANEL

| | | |
|--------------------------------|---|----------------------|
| Marshall H. Lichtenstein, Esq. | - | Industry Chairperson |
| Comer L. Hawkins | - | Industry Panelist |
| Chesley V. Morton, Jr. | - | Industry Panelist |

Concurring Arbitrator's Signature

Comer L. Hawkins
Comer L. Hawkins

Date of Decision: August 21, 1997

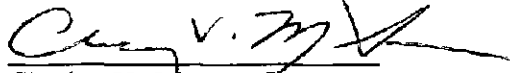
2. Respondents shall satisfy the fees assessed by reimbursing Claimant \$1, 500.00 and remitting the balance of \$2,750.00 to NASD Regulation, Inc.

Fees are payable to the NASD Regulation, Inc.

ARBITRATION PANEL

| | | |
|--------------------------------|---|----------------------|
| Marshall H. Lichtenstein, Esq. | - | Industry Chairperson |
| Comer L. Hawkins | - | Industry Panelist |
| Chesley V. Morton, Jr. | - | Industry Panelist |

Concurring Arbitrator's Signature


Chesley V. Morton, Jr.

Date of Decision: August 21, 1997

2. Respondents shall satisfy the fees assessed by reimbursing Claimant \$1, 500.00 and remitting the balance of \$2,750.00 to NASD Regulation, Inc.

Fees are payable to the NASD Regulation, Inc.

ARBITRATION PANEL

| | | |
|--------------------------------|---|----------------------|
| Marshall H. Lichtenstein, Esq. | - | Industry Chairperson |
| Comer L. Hawkins | - | Industry Panelist |
| Chesley V. Morton, Jr. | - | Industry Panelist |

Concurring Arbitrator's Signature


Marshall H. Lichtenstein, Esq.

Date of Decision: August 21, 1997