

**NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION**

In the Matter of the Arbitration Between

**Name of Claimant**

Miles Price

95-04789

**Name of Respondent**

Howe Barnes Investment, Inc.

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Securities Dealers

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**REPRESENTATION**

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For Claimant: Miles Price ("Price") was represented by Timothy O. Dudley, Esq. of Little Rock, Arkansas.

For Respondent: Howe Barnes Investment, Inc. was represented by Randall B. Gold, Esq. of Laurence, Kamin, Saunders & Uhlenhop, located in Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed: October 11, 1995.

Claimant's Submission Agreement signed on: October 4, 1995.

Statement of Answer filed by Respondent on: December 11, 1995.

Respondent's Submission Agreement signed on: November 15, 1995 by Betteann R. Keslinke, Vice President-HRD. Howe Barnes Investment, Inc.

**HEARING INFORMATION**

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: September 12, 1996 for Two (2) sessions.

Hearing Location: Chicago, Illinois.

**CASE SUMMARY**

Claimant Price alleged that Respondent had filed a Form U-5 with the NASD upon his termination which contained information which was false and which prevented Price from employment in the securities industry for a period of five months. In addition, Price alleged that Howe Barnes had failed to pay him commissions earned before termination.

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Respondent denied the material allegations of the Statement of Claim, asserting that the statements published on the Form U-5 were warranted, prudent and made in good faith. In addition, Howe Barnes asserted several affirmative defenses, including the following:

1. The claims for defamation were barred by the one-year statute of limitations for such claims;
2. Howe Barnes' disclosures on the Form U-5 were privileged under applicable law;
3. The Form U-5 was not defamatory because the statements are true and correct; and,
4. The claims for damages were not the result of any defamation.

#### **RELIEF REQUESTED**

Claimant requested entry of an award against Respondent for the sum of \$89,245.31, representing moving and travel expenses, lost and diminished income, lost savings and legal expenses. In addition, Claimant requested an award for damage to his reputation and the sum of \$5,245.31 for commissions and bonuses which Respondent failed to pay.

Respondent requested that the Statement of Claim be denied and dismissed in the entirety, and that it be awarded its costs and attorneys' fees incurred in this matter.

#### **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.

#### **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 Howe Barnes Investment, Inc. is liable for and shall pay to the Claimant, Miles Price, the sum of \$2,209.09;
2. The parties shall bear their own costs of arbitration, including attorneys' fees,

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except for those specifically enumerated herein; and

3. Any relief not specifically awarded is hereby denied.

### OTHER COSTS

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$300.00 member surcharge paid by Respondent Howe Barnes Investment, Inc. pursuant to Section 10333 of the NASD Code of Arbitration Procedure. In addition, the NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$600.00 postponement fee paid by Respondent Howe Barnes Investment, Inc.

### FORUM FEES

Pursuant to Section 10205 of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two hearing sessions x \$600.00 per session = **\$1,200.00**.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$500.00 non-refundable claim filing fee and the \$600.00 hearing sessions deposit previously paid by the Claimant, Mileage and the \$600.00 balance remaining in the account of Respondent Howe Barnes Investment, Inc. as forum fees. Furthermore, Respondent Howe Barnes Investment, Inc. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$300.00 as additional forum fees. Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

Concurring Arbitrators' Signatures  
Name

Date

/s/ James L. Schwartz, Esq.  
James L. Schwartz, Esq.  
Public Arbitrator, Chairperson

September 24, 1996

/s/ Richard C. Moenning, Esq.  
Richard C. Moenning, Esq.  
Public Arbitrator

September 23, 1996

/s/ Jerome J. Brault  
Jerome J. Brault  
Industry Arbitrator

September 24, 1996

For NASD Regulation, Inc. Use Only/Date of Decision: October 15, 1996