

NASD REGULATION, INC. AWARD

Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Randall Lindberg, Anthony Cheverez, Robert Pelio,
Scott Shaffer, Eric Lyon, Thomas Holly,
Michael Roberts, Thomas Jordan, Kodjo Gassou,
Michael Winnick, Andrew Palumbo,
Shandal Von Wood, Matthew Ernst, Scott Lask,
Craig Nilsen, Albert Copperstone, Chris Zafiroff,
Stephen F. Molinari, and George Stinson

95-05106

Name of Respondents

D. Blech & Company, Inc.
David A. Blech

REPRESENTATION OF PARTIES

For Claimants Randall Lindberg ("Lindberg"), Anthony Cheverez ("Cheverez"), Robert Pelio ("Pelio"), Scott Shaffer ("Shaffer"), Eric Lyon ("Lyon"), Thomas Holly ("Holly"), Michael Roberts ("Roberts"), Thomas Jordan ("Jordan"), Kodjo Gassou ("Gassou"), Michael Winnick ("Winnick"), Andrew Palumbo ("Palumbo"), Shandal Von Wood ("Von Wood"), Matthew Ernst ("Ernst"), Scott Lask ("Lask"), Craig Nilsen ("Nilsen"), Albert Copperstone ("Copperstone"), Chris Zafiroff ("Zafiroff"), Stephen F. Molinari ("Molinari"), and George Stinson ("Stinson"): John C. McBride, Esq. and Michael F. Germano, Esq. of the law firm of McBride and Keefe, Boston, MA.

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

CASE INFORMATION

Statement of Claim was filed on October 27, 1995.

Submission Agreements of Claimants were signed by Lindberg on November 13, 1995, Cheverez on October 18, 1995, Pelio on October 9, 1995, Shaffer on October 9, 1995, Lyon on October 4, 1995, Holly on October 5, 1995, Roberts on October 4, 1995, Jordan on October 4, 1995, Gassou on November 14, 1995, Winnick on November 14, 1995, Palumbo on October 16, 1995, Von Wood on October 17, 1995, Ernst on October 5, 1995, Lask on November 14, 1995, Nilsen on November 10, 1995, Copperstone on November 10, 1995, Zafiroff on November 20, 1995, Molinari on November 30, 1995, and Stinson on November 14, 1995.

Statement of Answer was filed by Respondents DBC and Blech on March 7, 1996.

Respondents did not execute Submission Agreements as required by Rule 10314 of the Code of Arbitration Procedure ("Code").

HEARING INFORMATION

The evidentiary hearing was held on May 12, 13, 14, and 15, 1997, in Fort Lauderdale, Florida with a total of eight hearing sessions.

CASE SUMMARY

Claimants alleged that Respondents DBC and Blech offered the Claimants guaranteed contracts worth the total sum of \$5,440,000.00, collectively. Claimants next alleged that the contracts incorporated minimum guaranteed payments, which included a personal guarantee by Respondent Blech. Claimants asserted that the offers and guarantees constituted misrepresentations of material facts which were intended to induce them to accept employment at DBC and significantly alter their lives in reliance thereon and the Claimants accepted the offers. Claimants contended that Respondents' actions constituted fraud, breach of contract, and constructive termination. Claimants further alleged abuses of the public securities markets.

Respondents denied all allegations of wrongdoing and Blech specifically denied that he was personally liable for the contractual obligations as alleged in the Statement of Claim. Respondents alleged the affirmative defenses of failure to state a claim upon which relief can be granted; no basis for liability against Blech personally; bar by the doctrine of impossibility of performance; illusory contracts; bar by the doctrines of unclean hands, pari delicto, waiver and estoppel; fraudulent inducement by Claimants; and, any claims other than breach of contract were barred by the economic loss rule.

RELIEF REQUESTED

Claimants collectively requested compensatory damages in the total amount of \$3,895,898.50, prejudgment interest, attorney's fees and costs pursuant to Florida Statutes, and punitive damages. The specific amount of compensatory damages requested by each Claimant, except Molinari and Stinson (see "Other Issues"), are as follows:

1)	Lindberg	\$503,617.27
2)	Cheverez	\$317,140.30
3)	Pelio	\$ 73,460.00
4)	Shaffer	\$ 48,997.99
5)	Lyon	\$273,000.00
6)	Holly	\$328,147.00
7)	Roberts	\$345,104.81
8)	Jordan	\$124,200.00
9)	Gassou	\$397,216.00
10)	Winnick	\$125,307.65
11)	Palumbo	\$166,384.64
12)	Von Wood	\$ 96,923.10
13)	Ernst	\$ 65,000.00
14)	Lask	\$382,122.00
15)	Nilsen	\$285,000.00
16)	Copperstone	\$259,278.03
17)	Zafiroff	\$105,000.00

Respondents requested that the claims asserted against them be dismissed with prejudice and that they be awarded their costs, disbursements, and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

1. Claimants Molinari and Stinson did not appear at the hearing of this matter and, through counsel, withdrew their claims from consideration by this panel.
2. Respondents did not file with NASD Regulation, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rules 10201 and 10314 of the Code. Having answered the claim and appeared and testified at the hearing, Respondents are bound by the determination of the arbitration panel on all issues submitted.
3. Following the conclusion of the hearing in this matter, Claimants made a request for leave to file supplementary authority which was opposed by Respondents. After consideration, this panel denied the request and closed the record in this matter on June 11, 1997.
4. 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(s) remain on file with NASD Regulation, Inc.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and post hearing submissions, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Blech and DBC are found liable, jointly and severally, and shall pay to Claimants, collectively, the total amount of \$342,175.00 exclusive of prejudgment interest. The specific amounts awarded to each Claimant are as follows:

1)	Lindberg	\$36,953.00
2)	Cheverez	\$28,040.00
3)	Pelio	\$13,460.00
4)	Shaffer	\$ 8,998.00
5)	Lyon	\$15,000.00
6)	Holly	\$23,500.00
7)	Roberts	\$32,924.00

8)	Jordan	\$20,200.00
9)	Gassou	\$17,216.00
10)	Winnick	\$20,308.00
11)	Palumbo	\$26,385.00
12)	Von Wood	\$16,923.00
13)	Ernst	\$11,000.00
14)	Lask	\$15,485.00
15)	Nilsen	\$36,532.00
16)	Copperstone	\$ 4,278.00
17)	Zafiroff	\$15,000.00

2. Claimants' requests for prejudgment interest, attorney's fees, costs, and punitive damages are denied.
3. Respondents' requests for attorney's fees, costs, and disbursements are denied.

FORUM FEES

Pursuant to Rule 10205(b) of the Code, a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10205(c) of the Code, the panel has assessed forum fees in the amount of \$12,000.00 (8 sessions x \$1,500.00 per session).

1. Claimants, jointly and severally, are assessed the sum of \$6,000.00, for which NASD Regulation, Inc. shall retain the \$3,000.00 previously deposited in partial satisfaction thereof, leaving a balance due to NASD Regulation, Inc. in the sum of \$3,000.00.
2. Respondents, jointly and severally, are assessed the sum of \$6,000.00.
3. NASD Regulation, Inc. shall retain the claim filing fee of \$500.00 paid by the Claimants.

4. Pursuant to Rule 10333 of the Code, Respondent DBC shall pay to NASD Regulation, Inc the \$500.00 past due member surcharge, which was previously invoiced.

Fees are payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/s/
Heather D. Fitzenhagen, Esq.
Industry Arbitrator, Presiding Chair

/s/
Lucie L. Sabella
Industry Arbitrator

/s/
Gerald H. Olin
Industry Arbitrator

Date of Decision: July 8, 1997