

NASD REGULATION, INC. AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Matthew B. Proman

95-05581

Name of Respondents

Stephen Palumbo
Karen Zanger
The Harriman Group, Inc.

REPRESENTATION

For Claimant Matthew B. Proman ("Claimant") appeared Anthony J. Hom, a sole practitioner with offices in Philadelphia, Pennsylvania.

For Respondents Stephen Palumbo ("Palumbo"), Karen Zanger ("Zanger"), and The Harriman Group ("Harriman"), collectively referred to as "Respondents", appeared Arthur Jakoby, Esq. of the firm Herrick, Feinstein, LLP located in New York, New York.

CASE INFORMATION

Statement of Claim filed on: November 21, 1995.

Claimant's Submission Agreement signed on: January 23, 1996.

Respondents filed a Joint Statement of Answer on: March 22, 1996.

Respondent Palumbo's Submission Agreement signed on: February 06, 1996.

Respondent Zanger's Submission Agreement signed on: February 07, 1996.

Respondent Harriman's Submission Agreement signed on: February 07, 1996.

HEARING INFORMATION

Hearing Date/Sessions: October 15, 1997 Two Sessions

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

CASE SUMMARY

Claimant alleged that he was wrongfully terminated from employment with Respondent Harriman on May 18, 1995, for reasons of theft of property, insubordination, removal of client files, and unauthorized trades. Claimant also alleged that Respondents submitted his Form U-5 stating the above reasons as cause for termination, and therefore, Claimant was subject to an investigation by the NASD, which found no

wrong doing on Claimant's part. Claimant stated that as a result of the investigation his professional image was irreparably damaged within the securities industry.

Claimant, in his first cause of action, alleged that he agreed to resign from Harriman and Respondents agreed that upon his resignation they would withdraw and nullify any and all accusations and inferences of wrongdoing and provide Claimant with positive references and would indicate on his Form U-5 to the SEC and NASD that Claimant voluntarily resigned. Claimant further alleged that he relied on these terms and tendered his resignation, but Respondents breached the contract by filing his Form U-5, with the SEC and NASD, which contained accusatory language and included references of misconduct and policy violations.

Claimant, in his second cause of action, alleged that Respondents engaged in libel by publishing false written statements which were made available to a third person(s). Claimant further alleged that Respondents published statements stating he violated firm policy, yet they have refused to state which policies he violated. Claimant also asserted that Respondents made these statements with malice and reckless disregard for the truth, and that these statements were made with the sole intention of causing injury to Claimant. Claimant, in his third cause of action, asserted that Respondents engaged in libel per se. Claimant further asserted that due to the statements made by Respondents and the resulting investigation, he was caused great personal embarrassment and professional humiliation. Claimant also asserted that he had to disclose to prospective employers the statements of Respondents and the NASD investigation, until it was concluded and a no cause letter issued, and as a result he was passed over for prospective positions.

Claimant, in his fourth cause of action, alleged that Respondents were negligent in their filing of the Form U-5 and their compliance with the agreed upon contract. Claimant further alleged that Respondents failed to act in good faith and honesty. Claimant also alleged that Respondents were negligent in determining which policies were violated and failed to conduct an investigation into said violations. Claimant asserted that due to the negligence of Respondents he was placed under investigation by the NASD and suffered mental and physical anguish, and a loss of esteem within the securities industry as a result. Claimant, in his fifth cause of action, alleged that Respondents Palumbo and Zanger published false and defamatory accusations to intentionally and maliciously inflict emotional distress on him. Claimant, in his sixth cause of action, alleged that Respondents engaged in prima facie tort. Claimant further alleged that the actions of Respondents were intentional, willful, and without cause, and were stated for the sole purpose of causing Claimant personal and professional harm.

Claimant, in his seventh cause of action, alleged that Respondents knew that the filing of his Form U-5, stating he was terminated for policy violations, would initiate a NASD investigation, and therefore, abused the processes of the NASD. Claimant, in his eighth cause of action, alleged that the actions of Respondents have interfered with his ongoing negotiations for employment and professional relationships.

Respondents maintained that Claimant was terminated for, among other things, not appearing at work, wrongful removal of customer files and unauthorized trading. Respondents further maintained that Claimant's claims of breach of contract, libel, defamation, negligence, and intentional infliction of emotional distress fail as a matter of law. Respondents also maintained that Claimant's claims of libel, defamation, prima facie tort, intentional infliction of emotional distress, and abuse of process fail as a matter of law under New York State Law.

Respondents offered the following affirmative defenses: Claimant has failed to state claims upon which

relief can be granted; Respondents complied with the applicable rules and regulations governing the filing of termination notices; and Claimant has improperly named Steven Palumbo and Karen Zanger as respondents in this arbitration. Claimant has no claims against either Mr. Palumbo or Ms. Zanger in their personal capacities.

RELIEF REQUESTED

Claimant requested:

- (a) On the first, fourth, and sixth cause of action damages in the amount of \$750,000.00 against all Respondents.
- (b) On the second, third, fifth, and seventh cause of action punitive and exemplary damages in the amount of \$300,000.00 against all Respondents.
- (c) On the eighth cause of action damages in the amount of \$500,000.00 against all Respondents.
- (d) All other such relief that the panel deems just and fair.
- (e) Costs, attorneys' fees and disbursements of this action.

Respondents requested that the Statement of Claim be dismissed in its entirety, that they be awarded costs, including attorneys' fees, and all other and further relief as the panel deems appropriate.

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. Claimant's claims are hereby dismissed in their entirety.
- 2. Claimant's request for punitive damages is hereby denied.
- 3. Claimant's request for attorneys' fees is hereby denied.
- 4. Forum Fees are to be assessed against Claimant.
- 5. All other requests for relief are hereby denied.

FORUM FEES

Pursuant to Rule 10332 of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$500.00 filing fee deposited by Claimant and the \$500.00 Member Surcharge deposited by Respondent Harriman and have assessed the following Forum Fees:

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2 Hearing sessions x \$1,000.00	=	\$2,000.00
Total Forum Fees	=	\$2,000.00
Hearing Session Deposit	=	(\$ 750.00)
Balance Due NASD Regulation, Inc.	=	\$1,250.00

1. Claimant be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$1,250.00 representing the balance due on the total forum fees assessed.

Fees are payable to NASD Regulation, Inc..

ARBITRATORS' SIGNATURES

I, Richard E. Lerner, Esq., do hereby affirm pursuant to Rule 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Richard E. Lerner, Esq.
Public Chairperson

I, Anthony P. Connolly, do hereby affirm pursuant to Rule 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Anthony P. Connolly
Public Panelist

I, John S. Miller, do hereby affirm pursuant to Rule 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 S. Miller
Industry Panelist

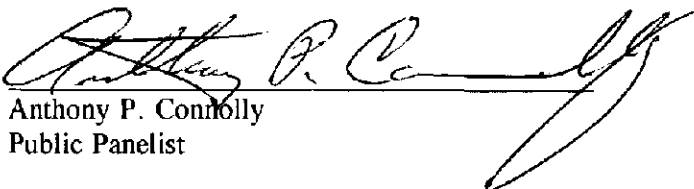
Date of Decision: March 11, 1998

ARBITRATORS' SIGNATURES

I, Richard E. Lerner, Esq., do hereby affirm pursuant to Rule 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Richard E. Lerner, Esq.
Public Chairperson

I, Anthony P. Connolly, do hereby affirm pursuant to Rule 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Anthony P. Connolly
Public Panelist

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John S. Miller
Industry Panelist

Date of Decision: March 11, 1998

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I, Richard E. Lerner, Esq., do hereby affirm pursuant to Rule 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Richard E. Lerner

Richard E. Lerner, Esq.
Public Chairperson

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John S. Miller
Industry Panelist

Date of Decision: March 11, 1998