

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Stephen H. Hamrick

95-05773

Names of Respondents

Denis P. Kelleher  
DPK Securities, Inc.  
Wall Street Investor Services  
Denis P. Kelleher, Inc.

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**REPRESENTATION**

For Claimant Stephen H. Hamrick ("Claimant") appeared Karen J. van Ingen, Esq., of the law firm Stairs Dillenbeck Finley & Merle, located in New York, New York.

For Respondents Denis P. Kelleher ("Kelleher"), DPK Securities, Inc. ("DPK"), Wall Street Investor Services ("WSIS"), and Denis P. Kelleher, Inc. ("Kelleher, Inc.") (collectively referred to as "Respondents") appeared Robert B. Best, Jr., Esq., of the law firm Armstrong, Teasdale, Schlafly & Davis, located in Kansas City, Missouri.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on December 6, 1995. Claimant's Submission Agreement was signed on December 4, 1995.

A Joint Statement of Answer was filed by Respondents on January 19, 1996. Respondents' Submission Agreement was signed on January 22, 1996.

**HEARING INFORMATION**

Pre-Hearing Conferences:	August 13, 1996	-	Two Sessions
	September 27, 1996	-	One Session
	September 16, 1997	-	One Session
	November 11, 1997	-	One Session

Hearing Dates/Sessions:	December 12, 1996	-	Two Sessions
	December 13, 1996	-	Two Sessions
	December 16, 1996	-	Two Sessions
	December 17, 1996	-	Two Sessions
	February 13, 1997	-	Two Sessions
	February 14, 1997	-	Two Sessions
	May 1, 1997	-	Two Sessions
	May 2, 1997	-	Two Sessions
	June 5, 1997	-	Two Sessions
	June 6, 1997	-	Two Sessions
	July 10, 1997	-	Two Sessions
	August 22, 1997	-	Two Sessions
	January 6, 1998	-	Two Sessions

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

### CASE SUMMARY

Claimant alleged that WSIS is a general partnership comprised of two partners, each of which is a Sub-chapter S Corporation: DPK Securities, Inc., and Denis P. Kelleher, Inc. Claimant also alleged that Kelleher owns and controls both of these entities and WSIS, where he is the Chief Executive Officer. Claimant further alleged that, in the Fall of 1993, Kelleher recruited him to become Chief Executive Officer of the WSIS Bank Division. Claimant asserted that he was invited by Kelleher to a series of meetings and negotiations which were concluded with a written Employment Agreement (the "Agreement") pursuant to the terms of which he agreed to join WSIS as CEO of the Bank Division.

Claimant also asserted that Kelleher, who initiated the written agreement, specifically identified in the Agreement the purpose of recruiting Claimant to WSIS:

"It is understood that the partners of the Company, Mr. Denis P. Kelleher, and Hamrick will work together to establish business policies, plans and goals for the Company and, in particular, to seek out acquisition subjects or other means by which the business of the company may be grown, whether with internal funding or by way of capital infusion from third parties."

Claimant alleged that Kelleher sold the Bank Division, and, as owner and controller of all the Respondent entities, Kelleher had the authority to do this. Claimant contended that, however, since the Bank Division, which he was specifically hired to manage, was sold to Liberty Securities Corp. and thus eliminated, under the Agreement this constituted "an event of Good Reason." Claimant contended that this was because it resulted in the "substantial diminution" of his "position, authorities, duties, and responsibilities" at WSIS. Claimant further contended that he objected to this "substantial diminution" and resigned on September 29, 1995. Claimant maintained that, under his Agreement, he became entitled to certain rights and benefits, including a 4% vested equity in WSIS, the balance of his salary for 1995, and the bonuses for

both 1994 and 1995.

Respondents maintained that only WSIS was a proper Respondent in this case because none of the other Respondents ever employed Claimant. Respondents also maintained that the letter dated January 6, 1994 was not signed by both parties and cannot constitute an enforceable agreement under the Statute of Frauds. Respondents further maintained that, even under the unsigned letter, Claimant was not entitled to additional salary or bonus for the rest of 1995 because he would only be eligible for salary and bonus if he quit for "Good Reason," meaning an action taken without his consent. Respondent further maintained that Claimant consented to the acquisition of the Bank Division throughout negotiations with Liberty Financial Group.

Respondents also contended that Claimant was not entitled to any additional salary and bonus, even if he quit for "Good Reason," because he failed to give written notice of termination "within 60 days of the occurrence of an event of Good Reason" as required by the unsigned letter of January 6, 1994. Respondents further contended that Claimant was not entitled to any bonus payments because the bonus procedure for WSIS in 1994 and 1995 was that no bonuses were paid to officers.

Respondents maintained that, under the unsigned January 6, 1994 letter, Claimant would receive a 4% stock interest only if he was terminated for Good Reason and if he gave notice of termination within 60 days of the event of Good Reason; otherwise, his interest would vest at 1/3 of 4% for each full year of service. Respondents also contended that, because Claimant completed only one full year of service, he would not be entitled to more than 1/3 of 4%, or 1.33%, stock interest, payable over three years. Respondents further contended that, if Claimant has any stock interest, it should be valued as of his date of termination.

### **RELIEF REQUESTED**

Claimant requested that he be awarded the following relief:

1. 4% equity interest in WSIS in the amount of \$504,740.00;
2. bonuses for the years 1994 and 1995 in the amount of \$300,000.00;
3. the balance of his salary for 1995 in the amount of \$37,000.00;
4. attorneys' fees in the amount of \$220,508.87;
5. expert witness fees in the amount of \$60,794.00;
6. court reporter fees in the amount of \$10,176.82; and
7. 9% statutory interest from September 29, 1995.

Respondents requested that the panel dismiss all respondents other than WSIS.

WSIS requested that an award be entered in its favor, and that Claimant be denied any recovery on any of the claims he alleged. WSIS also requested that, if any award is entered for Claimant, it be limited to a 1.33% stock interest, valued at \$22,000.00, payable over three years from the date of his termination.

### **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 original remains 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. WSIS is hereby liable and shall pay Claimant the sum of \$387,500.00 as compensatory damages, plus interest at the rate of 9% per annum from the date of the award until payment.
2. All claims against Kelleher, DPK and Kelleher, Inc. are dismissed in their entirety.
3. Claimant's requests for pre-judgment interest is denied.
4. Claimant's request for punitive damages is denied.
5. The parties shall bear their respective costs, including attorneys' fees, expert witness fees and court reporter fees.
6. All other requests for relief are denied.

### **FORUM FEES**

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee previously paid by Claimant and have assessed the following forum fees:


5 pre-hearing conference sessions x \$1,000.00	= \$ 5,000.00
26 hearing sessions x \$1,000.00	= <u>\$26,000.00</u>
Total forum fees	= \$31,000.00

1. Claimant is hereby liable for the sum of \$15,500.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$1,000.00 with NASD Regulation, Inc., and, therefore, Claimant shall pay the balance of \$14,500.00.

2. WSIS is hereby liable and shall pay the sum of \$15,500.00, representing one-half of the total amount of forum fees assessed.
3. WSIS is hereby liable and shall pay the sum of \$500.00, representing the member surcharge.

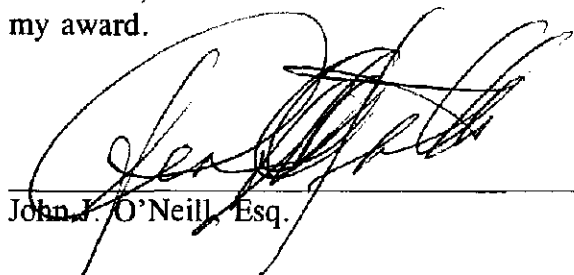
Fees are payable to NASD Regulation, Inc.

Arbitrators' Signatures

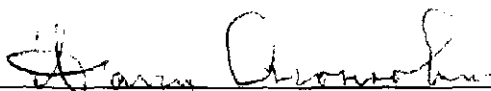
  
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John J. O'Neill, Esq.  
Industry Arbitrator - Chairperson

Date of Decision: March 11, 1998

I, **John J. O'Neill, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
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John J. O'Neill, Esq.

Arbitrators' Signatures

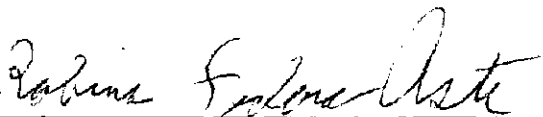
  
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Harry Aronsohn  
Industry Arbitrator

Date of Decision: March 11, 1998

I, **Harry Aronsohn**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
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Harry Aronsphn

Arbitrators' Signatures



Robina Fedora Asti  
Industry Arbitrator

Date of Decision: March 11, 1998

I, **Robina Fedora Asti**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Robina Fedora Asti