

**NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.**

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In the Matter of the Arbitration Between

Name of Claimant

Corey Owens

96-00807

Name of Respondents

Carlyle International Securities  
Carlyle USA, Inc.

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**REPRESENTATION**

For claimant Corey Owens ("claimant") appeared Joseph E. Gasperetti, Esq. a sole practitioner located in New York, New York.

A representative for respondents Carlyle International Securities ("CIS") and Carlyle USA, Inc. ("CUSA") did not appear at the hearing conducted in this matter.

**CASE INFORMATION**

Statement of Claim filed: February 23, 1996.

Claimant's Submission Agreement signed on: December 8, 1995

A Joint Statement of Answer filed by respondents on: May 21, 1996.

Respondent Carlyle International Securities' Submission Agreement signed on: May 20, 1996.

Respondent Carlyle USA, Inc. did not file a properly executed Submission Agreement.

**HEARING INFORMATION**

Hearing Dates/Sessions: January 21, 1997 one session

The hearing was conducted at the offices of NASD Regulation, Inc. located at 33 Whitehall Street, New York, New York.

### CASE SUMMARY

Claimant alleged that he was employed by respondents and that they breached a written employment agreement with him and committed fraud with respect to his hiring. Claimant further alleged that he entered into a one year employment contract on April 12, 1995 with respondents and that his employment was terminated without cause on July 12, 1995. Claimant also alleged that respondents wrongfully and maliciously withheld the filing of his U-5 because claimant would not tender a letter of resignation.

Claimant contended that prior to his employment by respondents, he worked as a research assistant at Nomura and had a good working environment. Claimant further contended that he was well compensated at Nomura. Claimant also contended that Jay Rodin ("Rodin"), as a principal officer of respondents and on behalf of respondents, solicited him as a prospective employee during late 1994 and early 1995. Claimant asserted that after negotiations, he entered into a written agreement with respondents agreeing to employ him for a term of not less than one year with compensation of not less than \$40,000.00 and a bonus of not less than \$15,000.00. Claimant further asserted that respondents were permitted to terminate him for cause only with written notice.

Claimant alleged that after commencing employment with respondents he discovered that the position he had agreed to take did not exist. Claimant further alleged that he was terminated in mid-July 1995 although he properly performed his employment duties. Claimant also alleged that Rodin informed him that respondents' financial condition was very poor and that his employment was therefore over. Claimant contended that respondents requested that he file a resignation letter and that he refused to do so. Claimant further contended that respondents waited until September of 1995, to file the form. Claimant also contended that as a result of the above, he has suffered a loss for which the respondents should be held liable.

Respondents denied all material allegations in the Statement of Claim. Respondents maintained that in June 1995, approximately two months after claimant commenced his employment with them, claimant approached Rodin and expressed his unhappiness with his job. Respondents further maintained that during his brief tenure with respondents, claimants performance was unsatisfactory, as claimant was well aware. Respondents also maintained that from that point forward until his July 17, 1995 resignation, claimant did not perform any meaningful services. Respondents contended that claimant voluntarily resigned and that respondents offered to re-hire him in writing but that claimant never appeared for work. Respondents further contended that as a result of the above, they should not be held liable.

### RELIEF REQUESTED

Claimant Corey Owens requested \$46,225.32 in monetary damages and interest from July 12, 1995.

Respondents Carlyle International Securities and Carlyle USA, Inc. requested that the claims be dismissed in their entirety. Respondents further requested that any damages be set-off by the amount of money claimant collected for approximately six weeks from respondents while performing no services. Respondents also requested all other and further relief against claimant and in favor of respondents that the panel determines just and fair.

**OTHER ISSUES CONSIDERED & DECIDED**

The arbitration panel made the following rulings concerning respondents Carlyle International Securities and Carlyle USA, Inc. who failed to appear at the evidentiary hearing conducted in this matter:

1. Pursuant to Rule 2110 of the Code of Arbitration Procedure, the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that respondents Carlyle International Securities and Carlyle USA, Inc. were members of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over respondents Carlyle International Securities and Carlyle USA, Inc. pursuant to Rule 10301 of the Code of Arbitration Procedure.
3. In accordance with Rules 10310, 10315 and 10318 of the Code of Arbitration Procedure, the panel found that NASD Regulation, Inc. provided respondents Carlyle International Securities and Carlyle USA, Inc. with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel therefore, determined to proceed with the hearing without respondents Carlyle International Securities and Carlyle USA, Inc. whose absences were unexcused.

Industry Arbitrator Derek Park did not appear at the hearing. Claimant, being the only present party, agreed to proceed in the absence of Derek Park and to accept the unanimous decision of the two remaining arbitrators.

At the hearing, the claimant 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 claimant 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. Respondents Carlyle International Securities and Carlyle USA, Inc. are jointly and severally liable and shall pay to the claimant Corey Owens \$46,225.32 in compensatory damages.
2. Respondents Carlyle International Securities and Carlyle USA, Inc. are jointly and severally liable and shall pay to the claimant Corey Owens \$6,346.27 in interest damages.
3. The parties shall bear their respective attorney's fees and costs.
4. All other relief requests 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 deposited by claimant and have assessed the following forum fees:

one session x \$600.00	= \$600.00
minus claimant's \$600.00 deposit	= <u>\$600.00</u>
total outstanding	= \$ 0.00

Respondents Carlyle International Securities and Carlyle USA, Inc. be and are hereby jointly and severally liable for the sum of \$600.00 representing the total amount of forum fees assessed. Therefore, respondents Carlyle International Securities and Carlyle USA, Inc. shall pay to claimant Corey Owens \$600.00 as reimbursement of the hearing session deposit.

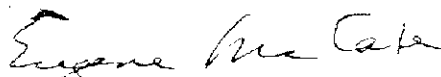
ARBITRATORS' SIGNATURES

I, Frederick Joseph, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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Frederick Joseph, Esq.  
Public Chairperson

I, Eugene McCabe, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



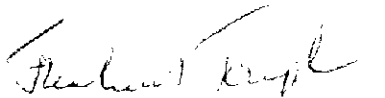
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Eugene McCabe, Esq.  
Public Panelist

Date of Decision: February 24, 1997

ARBITRATORS' SIGNATURES

I, Frederick Joseph, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Frederick Joseph, Esq.  
Public Chairperson

I, Eugene McCabe, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Eugene McCabe, Esq.  
Public Panelist

Date of Decision: February 24, 1997