

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

Ronald Broadstone

96-01844

**Name of Respondent**

The Ohio Company

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**REPRESENTATION**

For claimant Ronald Broadstone ("claimant") appeared H. Ritchey Hollenbaugh, Esq., of the law firm of Draper, Hollenbaugh & Broscoe Co., L.P.A., locate in Columbus, Ohio.

For respondent The Ohio Company ("respondent") appeared Marion H. Little, Jr., Esq., of the law firm of Zeiger & Carpenter, located in Columbus, Ohio.

**CASE INFORMATION**

Statement of Claim was filed on April 26, 1996. Claimant's Submission Agreement was signed on April 26, 1996.

Statement of Answer and Motion to Dismiss was filed on May 3, 1996. Respondent's Submission Agreement was signed on May 20, 1996.

**HEARING INFORMATION**

Injunctive Relief Hearing: May 6, 1996 - One Session

Hearing Date/Session: May 29, 1996 - One Session

The hearings were held at the Doubletree Guest Suite Hotel located in Columbus, Ohio.

**CASE SUMMARY**

Claimant alleged that he was employed by respondent from February 1982 until April 26, 1996 at which time he resigned to become an investment consultant with McDonald & Company Securities, Inc. ("McDonald"). Claimant further alleged that he developed close service

relationships with his investment clients and that his new association with McDonald will allow him to better service his clients. Claimant asserted that the vast majority of his clients have been with him for at least 10 years and are loyal to him not to respondent.

Claimant alleged that his clients will be irreparably harmed if they are not permitted to transfer to McDonald with him. Claimant also asserted that he has no contract with respondent prohibiting him from requesting his accounts to transfer to his new employer, but that respondent has, on a number of occasions, hindering the transfer of clients of other registered representatives who left respondent's employ.

Respondent maintained that the claim does not present a dispute, claim or controversy eligible for arbitration. Respondent further maintained that claimant put forth a hypothetical controversy, but did not assert that respondent has interfered with the transfer of any client accounts or engaged in any impropriety.

Respondent maintained that it is permitted to take all lawful action necessary to protect its clients and its confidential and trade secret information, such a customer lists. Respondent also maintained that claimant cannot ask for injunctive relief which prohibits respondent from preventing the orderly transition of clients to claimant.

Respondent maintained that it has, in the past, received judicial relief preventing former brokers and competitors from misappropriating its confidential trade secrets, such as customer lists. Respondent further maintained that in several different cases it was awarded monetary relief based on misappropriation. Respondent also asserted that although claimant alleges the absence of a written contract, a securities brokerage firm's customer list is entitled to trade secret protection under Ohio law, even absent a specific contractual provisions.

#### **RELIEF REQUESTED**

Claimant requested that respondent be immediately enjoined from doing anything that would delay the orderly transfer of accounts to his new employer. Claimant further requested that the panel permanently enjoin respondent from interfering with the orderly transfer of his clients.

Respondent requested that the claims be dismissed in their entirety.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Claimant filed this matter pursuant to Section 47 of the Code of Arbitration Procedure requesting that respondent be prohibited from interfering with the orderly transfer of his clients to his new employer. Robert Shiffra, the single arbitrator appointed to hear the application for the immediate injunctive order, granted claimant's request for immediate injunctive relief and ordered that respondent be restrained from doing anything that would delay the orderly transfer of accounts to claimant's new employer.

At the hearing on the merits, claimant made a motion to amend the Statement of Claim. The panel considered this request and denied the motion.

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. Claimants's request to extend the Temporary Restraining Order is hereby denied.
2. Claimant's request for a Permanent Injunction is hereby denied.
3. All claims against respondent are dismissed in their entirety.
4. Each party shall bear its respective costs, including attorneys' fees.

### **FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 non-refundable filing fee and the \$2,500.00 non-refundable surcharge previously deposited by claimant and have assessed the following forum fees:

Injunctive relief hearing:	\$300.00
1 hearing sessions:	<u>\$600.00</u>
Total forum fees:	\$900.00

Claimant be and hereby liable for the sum of \$900.00, representing the total amount of forum fees assessed. Claimant previously deposited \$600.00 with the NASD and, therefore, claimant is liable and shall pay \$300.00 to the NASD.

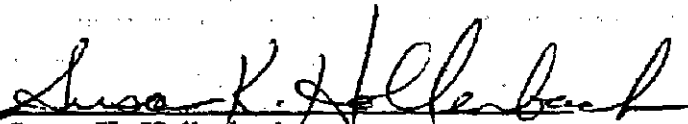
Arbitrators' Signatures

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Robert Shiffra, Esq.  
Chairperson-Industry Arbitrator

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Robert A. Greenberg  
Industry Arbitrator



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Susan K. Hollenbach  
Industry Arbitrator

Date of decision: May 29, 1996

Arbitrators' Signatures

A handwritten signature in cursive script, appearing to read "Robert Shiffra".

Robert Shiffra, Esq.  
Chairperson-Industry Arbitrator

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Robert A. Greenberg  
Industry Arbitrator

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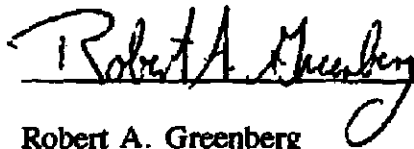
Susan K. Hollenbach  
Industry Arbitrator

Date of decision: May 29, 1996

Arbitrators' Signatures

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Robert Shiffra, Esq.  
Chairperson-Industry Arbitrator

A handwritten signature in cursive script, reading "Robert A. Greenberg", written over a horizontal line.

Robert A. Greenberg  
Industry Arbitrator

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Susan K. Hollenbach  
Industry Arbitrator

Date of decision: May 29, 1996