

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Jaim A. Bailey

96-02944

Name of Respondents

Lehman Brothers, Inc.  
Lehman Government Securities, Inc.  
Timothy Jay  
Mark Polhill  
Munir Dauhajre

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**REPRESENTATION**

Claimant Jaim A. Bailey ("Bailey") appeared *pro se*. Claimant was previously represented by Anthony Ferrarra of the law offices of Polstein, Ferrara & Dwyer, P.C. located in New York, New York.

For Respondents Lehman Brothers, Inc. ("Lehman Brothers"), Lehman Government Securities, Inc. ("Lehman"), Timothy Jay ("Jay"), Mark Polhill ("Polhill"), and Munir Dauhajre ("Dauhajre"), (hereinafter "Respondents"), appeared Vincent Alfieri of the law office of Robinson Silverman Pearce Aronsohn & Berman located in New York, New York.

**CASE INFORMATION**

Bailey's Statement of Claim was filed on July 3, 1996.  
Bailey's Amended Statement of Claim was filed on March 13, 1997.  
Bailey's Submission Agreement was signed on July 17, 1996.

Respondents' filed a Joint Statement of Answer on September 20, 1996.  
Respondents' filed a Joint Reply to the Amended Statement of Claim on May 9, 1997.  
Lehman Brother's Counterclaim was filed on February 19, 1998.  
Lehman Brother's Submission Agreement was signed on September 30, 1996.  
Lehman did not file a signed Submission Agreement.  
Jay's Submission Agreement was signed on October 28, 1996.  
Polhill's Submission Agreement was signed on November 1, 1996.  
Dauhajre's Submission Agreement was signed on November 21, 1996.

### HEARING INFORMATION

Pre-Hearing Conference:	September 22, 1997	One Session
	November 7, 1997	One Session
	January 7, 1998	One Session
	March 26, 1998	One Session
Hearing Dates/Sessions:	April 20, 1998	Two Sessions
	April 21, 1998	Two Sessions
	April 27, 1998	Two Sessions

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

### CASE SUMMARY

Bailey asserted that he was employed at Lehman Brothers as a computer programmer in its Fixed Income Analytic Department in June of 1992 and was promoted to Government Analytic Project Leader in October of 1993. Bailey further asserted that he received an offer of employment from J.P. Morgan in July of 1994, but his supervisors, specifically Jay, Polhill and Grant Whiteside ("Whiteside"), encouraged him to stay at Lehman Brothers by offering him a position to develop software for the Lehman Government Options Trading Desk. Bailey also asserted that Jay, Polhill and Whiteside indicated that he would be able to learn the options trading business while he developed software. Bailey alleged that they also informed him that he would be evaluated for a position as a trader of Government securities or options within six months to a year. Bailey asserted that he remained at Lehman Brothers because of this employment opportunity. Bailey alleged that he realized that Respondents had no intention of honoring their commitment and had passed him over for trading positions despite their evaluations deeming him qualified to trade Government securities and options. Bailey further alleged that he protested and approached Polhill who informed him that he would continue to be employed in the software department. Bailey alleged that while he was creating the Options Market Monitor, he discovered that Polhill, acting in concert with or with the approval of Jay, had transferred 1994 calendar year profits into the first quarter of 1995 in order to increase compensation for 1995. Bailey asserted that Polhill and Jay realized that he planned to seek employment elsewhere, and that they feared he would report their alleged illegal activities to retaliate against them. Bailey further asserted that Jay and Polhill made defamatory statements and gave negative performance reviews to prospective employers in order to prevent him from reporting their activities and to maliciously damage his career. Bailey alleged he lost an employment opportunity at J.P.Morgan as a result of Respondent's false statements. Bailey also asserted that Respondents made defamatory remarks to ensure that ING (prospective employer) would not offer him employment. Bailey alleged that he asked Polhill for the trading position he had been promised, but when Polhill refused, he secured a job at SANWA Securities, USA developing software.

Respondents contended that Bailey was hired as a computer programmer and had no trading

experience. Respondents maintained that, although Bailey passed his Series 7 and 63 exams, this process was required of most Lehman Brother employees. Respondents further contended that when Bailey informed Polhill he had received an offer of employment with J.P. Morgan, Polhill encouraged him to stay, but did not induce him to forgo the offer by offering him a position to develop software. Respondents maintained that Polhill offered Bailey the position at his desk because Bailey had a negative relationship with his supervisor. Respondents asserted that Bailey initially inquired about a trading position and that Polhill, without making promises, informed him that he would be evaluated in one year to determine whether he would be offered a trading position. Respondents further asserted that Bailey resigned nine months later thereby preventing anyone from providing a qualified evaluation of his performance. Respondents maintained that neither Jay nor Polhill were involved in any illegal transfer of profits. Respondents further maintained that Bailey neither questioned the profit reports nor was authorized to view them. Respondents also maintained that Bailey failed to report these alleged crimes either to his supervisors or to the Compliance Office. Respondents asserted that neither Jay nor Polhill made defamatory remarks about Bailey or prevented him from seeking employment elsewhere. Respondents maintained that Dauhajre (salesman for Lehman Brothers) was never an employee at ING and never made defamatory remarks about Bailey. Respondents further asserted that when Bailey's demands for a trading position were rejected, he accepted employment at SANWA Securities as a computer programmer.

Lehman Brothers alleged in its Counterclaim that Bailey misappropriated approximately one hundred and forty-two confidential documents from it during the course of his employment. Lehman Brothers further asserted Bailey breached the terms and conditions of his employment as stated in the Confidentiality Agreement and the Lehman Brothers Code of Conduct, breached his duty of loyalty to Lehman Brothers, and converted to his own use confidential documents of Lehman Brothers.

### **RELIEF REQUESTED**

Bailey requested:

- (a) Damages in an amount of no less than \$10,600,000.00;
- (b) Damages in an amount of at least \$1,000,000.00 for lost employment opportunity at J.P. Morgan;
- (c) Damages in an amount of at least \$1,000,000.00 for lost employment opportunity at ING;
- (d) Punitive damages of no less than \$20,000,000.00;
- (e) Interest on the Award; and
- (f) Forum fees.

Respondents requested that the Statement of Claim be dismissed in its entirety, together with all appropriate relief.

Lehman Brothers requested in its Counterclaim: damages in an amount in excess of \$100,000.00; judgment that Bailey be enjoined from disclosing any information regarding Lehman Brother's confidential documents; other relief as may be deemed just and proper; and costs and disbursements of this Counterclaim.

### 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.

The following occurred at the hearing:

1. Bailey dismissed his attorney Anthony Ferrara and proceeded with the arbitration *pro se*.
2. Bailey withdrew his claims for defamation and interference with employment opportunities with prejudice.
3. Respondents waived any right to litigate or otherwise pursue a damage claim against Bailey for frivolous claim or abuse of process.
4. Lehman Brothers withdrew its Counterclaim with prejudice.

The Panel made the following determinations concerning Lehman, who did not file a Submission Agreement:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the Panel found subject matter jurisdiction over this entire controversy.
2. The Panel found that Lehman was a member of the NASD at the time this controversy arose. Accordingly, the Panel found jurisdiction over Lehman pursuant to Rule 10201 of the Code.
3. The Panel found that Lehman was required to file a Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the Panel found that the Statement of Claim was properly served upon Lehman pursuant to Rule 10314(a) of the Code.

### 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. Bailey's claims are hereby dismissed in their entirety.
2. All other requests for relief are hereby denied.

### FORUM FEES

Pursuant to Rule 10205(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$500.00 non-refundable filing fee deposited by Bailey and the \$500.00 non-refundable filing fee deposited by Lehman Brothers and have assessed the following Forum Fees:

2 Pre-hearing conferences x \$300.00	=	\$ 600.00
2 Pre-hearing conferences (with full Panel) x \$1,500.00	=	\$ 3,000.00
6 Hearing sessions x \$1,500.00	=	<u>\$ 9,000.00</u>
Total Forum Fees	=	\$12,600.00

1. Bailey is liable for and shall pay the sum of \$6,300.00, representing one-half of the total forum fees assessed. Bailey previously deposited \$1,500.00 with NASD Regulation, Inc., therefore, Bailey is liable for and shall remit the sum \$4,800.00.
2. Respondents are jointly and severally liable and shall pay the sum of \$6,300.00, representing one-half of the total forum fees assessed.
3. Lehman Brothers is liable for and shall pay the sum of \$500.00, representing the member surcharge assessed.
4. Lehman is liable for and shall pay the sum of \$500.00, representing the member surcharge assessed.

Fees are payable to NASD Regulation, Inc.

**ARBITRATION PANEL**

Theodore M. Simon, Esq.	-	Public Chairperson
Richard A. Jacobs		Public Arbitrator
John J. Bucko	-	Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**




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Theodore M. Simon, Esq.  
Chairperson - Public Arbitrator

Date of decision: June 3, 1998

I, **Theodore M. Simon, 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.



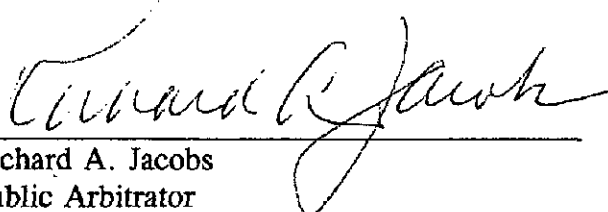
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Theodore M. Simon, Esq.

**ARBITRATION PANEL**

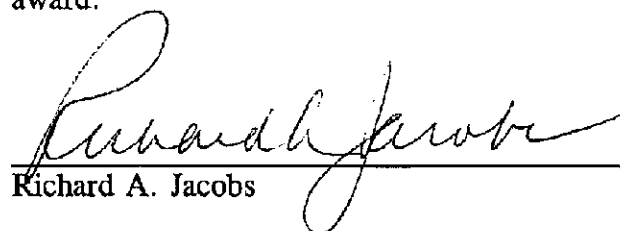
Theodore M. Simon, Esq.	-	Public Chairperson
Richard A. Jacobs	-	Public Arbitrator
John J. Bucko	-	Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**

  
Richard A. Jacobs  
Public Arbitrator

Date of decision: June 3, 1998

I, **Richard A. Jacobs**, 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.

  
Richard A. Jacobs

**ARBITRATION PANEL**

Theodore M. Simon, Esq.	-	Public Chairperson
Richard A. Jacobs	-	Public Arbitrator
John J. Bucko	-	Industry Arbitrator

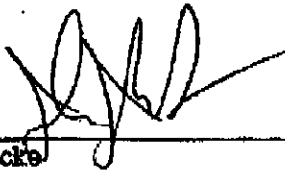
**CONCURRING ARBITRATOR'S SIGNATURE**



John J. Bucko  
Industry Arbitrator

Date of decision: June 3, 1998

I, John J. Bucko, 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.



John J. Bucko