

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimant

Roger Muniz

Case No.
96-02946

Names of Respondents

Duke & Co., Inc.
Charles Bennett

REPRESENTATION

For claimant Roger Muniz ("claimant") appeared Eric Ross, Esq. of the law offices Fischbein Badillo Wagner Harding located in New York, New York.

For respondents Duke & Co., Inc. ("Duke") and Charles Bennett ("Bennett") (collectively "respondents") appeared Kenneth Gatz, Esq. of the law offices Gersten, Savage, Kaplowitz, Fredericks & Curtin, LLP located in New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on: July 10, 1996.

Claimant's Submission Agreement was signed on: June 28, 1996.

A Joint Statement of Answer was filed by respondents on: October 8, 1996.

Duke did not submit a properly executed Submission Agreement.

Bennett did not submit a properly executed Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conferences:	May 12, 1997	-	One Session
	July 31, 1997	-	One Session
Hearing Dates/Sessions:	November 12, 1997	-	Two Sessions
	November 13, 1997	-	Two Sessions
	November 25, 1997	-	Two Sessions
	December 3, 1997	-	Two Sessions
	January 8, 1998	-	One Session

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

CASE SUMMARY

Claimant alleged that he was employed by Duke from July 1994 until June 7, 1996. Claimant contended that, on June 7, 1996, Bennett accused him of forging Bennett's initials on an order ticket and summarily terminated his employment. Claimant maintained that he did not forge Bennett's initials on the order ticket and that Bennett knew his accusation to be false. Claimant contended that employees of Duke contacted his new employer and made false, disparaging, and slanderous remarks about him. Claimant also contended that Duke owed him a fiduciary duty to supervise Bennett and other office managers. Claimant alleged that Duke withheld his personal property from and wages owed to him.

Respondents maintained that claimant did forge Bennett's signature on an order ticket and that was the reason he was terminated. Duke denied that anything was said to others beyond an explanation as to why claimant was no longer with Duke. Respondents further maintained that it paid all sums owed to claimant.

RELIEF REQUESTED

Claimant requested compensatory damages in an amount in excess of \$2,000,000.00 plus reasonable attorneys' fees, liquidated damages, interest and costs.

Respondents requested that the arbitration be dismissed in its entirety and that they be awarded the costs of defending this arbitration.

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 NASD Regulation, Inc.

The panel made the following determinations concerning respondents Duke and Bennett who did not file Submission Agreements in this matter:

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 Bennett was a person associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Bennett pursuant to Rule 10201 of the Code.
3. The panel found that Duke was a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Duke

pursuant to Rule 10201 of the Code.

4. The panel found that respondents Duke and Bennett were required to file Submission Agreements 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 respondents Duke and Bennett 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. Duke be and hereby is liable for and shall pay to claimant the sum of **FIFTY TWO THOUSAND DOLLARS (\$52,000.00)** for commissions earned but not paid by Duke.
2. Duke be and hereby is liable for and shall pay to claimant the sum of **THIRTY EIGHT THOUSAND DOLLARS (\$38,000.00)** for loss of wages.
3. Duke be and hereby is liable for and shall pay to claimant the sum of **TWENTY NINE THOUSAND DOLLARS (\$29,000.00)** for attorneys' fees.
4. Duke be and hereby is liable for and shall pay to claimant the sum of \$1,500.00 to reimburse claimant for the filing fee and hearing session deposit previously paid to NASD Regulation, Inc.
5. All claims against Bennett are hereby denied.
6. All other requests are hereby denied.

FORUM FEES

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

2 pre-hearing conferences x \$300.00	=	\$ 600.00
9 hearing session x \$1,000.00	=	\$9,000.00

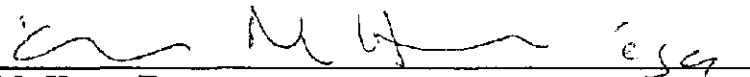
1. Duke be and hereby is liable for the sum of \$9,600.00, representing the total amount of forum fees assessed. Claimant previously deposited \$1,000.00 with NASD Regulation, Inc. and, therefore, Duke shall pay the balance of \$8,600.00.
2. Duke be and hereby is liable for and shall pay claimant the sum of \$1,500.00 in

accordance with the "Award" section above.


3. Duke is hereby liable for and shall pay the sum of \$500.00, for the member surcharge.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES


Karen M. Hertz, Esq.
Public Arbitrator

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


Karen M. Hertz, Esq.
Public Arbitrator

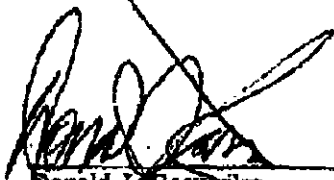
Date of Decision: February 18, 1998

ARBITRATORS' SIGNATURES



Donald J. Kasweiler
Industry Arbitrator

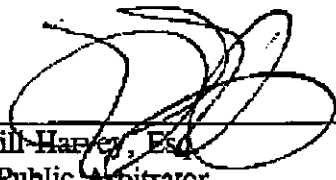
I, Donald J. Kasweiler, do hereby affirm, pursuant to Article 7507 of Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Donald J. Kasweiler
Industry Arbitrator

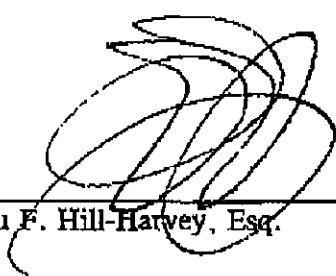
Date of Decision: February 18, 1998

ARBITRATORS' SIGNATURES



Karimu F. Hill-Harvey, Esq.
Chairperson-Public Arbitrator

I, Karimu F. Hill-Harvey, Esq., do hereby affirm, pursuant to Article 7507 of Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Karimu F. Hill-Harvey, Esq.

Date of Decision: February 18, 1998