

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

**NASD Regulation, Inc. Office of Dispute Resolution**

**In the Matter of the Arbitration Between**

**Name of Claimant**

David Jeff Margulies

96-03519

**Names of Respondents**

John G. Orosey, Jr.  
Lehwald, Orosey & Pepe Incorporated

**REPRESENTATION**

For Claimant David Jeff Margulies ("Margulies"): Charles E. Steinberg, Esq. of Smart, Florida.

For Respondents Lehwald, Orosey & Pepe, Incorporated ("LOP") and John G. Orosey, Jr. ("Orosey"): Gary Chernay of Cohen, Chernay, Norris, Weinberger & Harris, North Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed: August 14, 1996.

Claimant's Submission Agreement signed: August 14, 1996.

Joint Statement of Answer filed by Respondents LOP and Orosey: October 11, 1996.

Respondent LOP's Submission Agreement/Corporate Acknowledgment signed: February 24, 1998 by Gerard J. Pepe on behalf of LOP.

Respondent Orosey did not file an executed Submission Agreement.

**HEARING INFORMATION**

On December 11, 1997 the arbitration panel conducted a pre-hearing conference which lasted one (1) session.

On February 23 and 24, 1998 hearings lasting four (4) sessions were conducted in Fort Lauderdale, Florida.

**CASE SUMMARY**

Claimant alleged that this arbitration is against his former employer LOP and Orosey and is based upon the malicious and intentionally wrongful filing of the Form U-5 with the NASD which Claimant alleged defamed him. Claimant maintained that the defamation occurred as a result of the Respondents stating

Page 2

NASD Award #96-03519

on the Form U-5 that he was discharged rather than voluntarily terminated; that the Form U-5 erroneously stated the reason for Claimant's "discharge" was his "lack of production and failure to comply with company procedure" which Claimant alleged was untrue and maliciously made by the Respondents in preparing and filing the Form U-5. Claimant further maintained that, subsequently, and for approximately two years, he could not obtain employment in the securities and related business fields; that on at least two occasions in conversations with prospective employers, the Respondents further defamed him by making derogatory statements about him and falsely repeated why he was "discharged" from the employ of the Respondents which, on each occasion resulted in Claimant not being hired.

Respondents LOP and Orosey alleged that the issues that the panel has to consider in this case are whether or not Claimant was discharged as stated on the Form U-5 or did he voluntarily quit; whether or not the two statements made on the Form U-5 were true or did the Respondents have a reason to believe them to be true; whether or not Respondent Orosey acted solely in his corporate capacity as an officer of the company and if so he is immune from liability under the "corporate shield doctrine". Respondents maintained that Claimant was discharged because he left the office without signing a promissory note as requested; that there was sufficient evidence to show that the statements made on the Form U-5 were in good faith and were believed to be true by the corporation; that both the corporation and anyone acting on behalf of the corporation would at least have limited immunity for statements made on the Form U-5 and that Respondents have complete immunity for those statements; that the Claimant submitted no documents or testimony in support of his position that he either sought employment at the numerous places he stated or that he could not be employed at those places; that no letters to the prospective employers were submitted nor did any witness testify that he would not hire Claimant; and, that Claimant submitted no written documentation in support of his loss of income claim, including tax returns, W2 Forms, 1099 Forms or even a letter from any previous employer in support of Claimant's earnings ability.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$500,000.00; punitive damages in the sum of \$2,500,000.00; attorneys' fees and costs, the award of which to be reserved for determination by the appropriate Circuit Court of the State of Florida, pursuant to the Florida Arbitration Act; and, such other and further relief as the arbitration panel may deem just and proper.

Respondents requested dismissal of the Claim.

#### **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.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent LOP is found liable and shall pay to the Claimant the sum of \$46,450.00.
2. Respondent Orosey is found not liable and, therefore, all claims against him are hereby dismissed.

Page 3

NASD Award #96-03519

3. Claimant's Form U-5 shall be amended at Section 12 as follows: Reason for termination shall be marked as "Other" rather than "discharged". As to the reason for termination, "Lack of Production and Failure to Comply With Company Procedure" shall be deleted and "Unclear Office Policy as it related to his employment" shall be inserted.
4. Claimant's requests for attorneys' fees, costs and punitive damages are denied.
5. Respondent LOP shall pay to the Claimant the sum of \$1,000.00 representing reimbursement of the hearing session deposit previously paid by the Claimant.

#### FORUM FEES

Pursuant to Rule 10205c of the Code of Arbitration Procedure the arbitration panel has assessed forum fees in the amount \$5,000.00 (four (4) hearing sessions x \$1,000.00 + one (1) pre-hearing conference (panel) x \$1,000.00).

1. Respondent LOP is assessed forum fees in the amount of \$5,000.00 for which NASD Regulation, Inc. shall retain the \$1,000.00 previously deposited by the Claimant in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. by LOP of \$4,000.00.
2. NASD Regulation, Inc. shall retain the claim filing fee of \$500.00 paid by the Claimant
3. NASD Regulation, Inc. shall retain the member surcharge of \$500.00 paid by LOP.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

#### ARBITRATION PANEL

Concurring Arbitrators' Signatures

\_\_\_\_\_/s/  
Diane M. Perry, Esq.

Public/Chairperson

\_\_\_\_\_/s/  
Gordon Keith Grandy

Public/Panelist

\_\_\_\_\_/s/  
Jay L. Valinsky, Esq.

Industry/Panelist

Date of Decision: May 4, 1998