

N.A.S.D. AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Paul D. Blasetti, Sr.

96-03712

Name of Respondents

Bryn Mawr Investment Group
Howard Flesher
William Robert Frazier, Jr.

REPRESENTATION

Claimant Paul D. Blasetti, Sr. ("Claimant") was represented by David C. Francescki, Jr., Esq., Stradley Ronon Stevens & Young, Philadelphia, PA.

Respondent Bryn Mawr Investment Group ("BMIG") was represented by Richard A. Levan, Esq., Klehr, Harrison, Harvey Branzburg & Ellers, Philadelphia, PA.

Respondents Howard Flesher ("Flesher") and William Robert Frazier, Jr. ("Frazier") were represented by Alan M. Lieberman, Esq., Schnader Harrison Segal & Lewis, Philadelphia, PA.

CASE INFORMATION

Statement of Claim filed: August 27, 1996

Statement of Answer to Counterclaim: May 5, 1997

Amended Statement of Claim filed: October 31, 1997

Claimant's Submission Agreement signed on: July 8, 1996

Joint Statement of Answer and Counterclaim filed by Respondents BMIG, Flesher and Frazier (collectively "Respondents") filed on: March 24, 1997

Joint Amended Statement of Answer filed by Respondents: November 6, 1997

Respondent BMIG's Submission Agreement signed on: April 2, 1997

Respondent Flesher's Submission Agreement signed on: March 24, 1997

Respondent Frazier's Submission Agreement signed on: March 24, 1997

HEARING INFORMATION

Pre-Hearing Conference: November 10, 1997/one session (single arbitrator)

Hearing Dates/Sessions: November 12, 1997/two sessions
November 13, 1997/two sessions
November 14, 1997/two sessions
December 15, 1997/two sessions
December 19, 1997/two sessions
January 8, 1998/two sessions
January 9, 1998/two sessions
March 12, 1998/two sessions

Hearing Location: NASD Regulation District Office
Philadelphia, PA

CASE SUMMARY

Claimant alleged damages in connection with his wrongful termination by Respondents in December, 1995. Claimant sought recovery on theories of breach of contract, libel, negligence, defamation, intentional infliction of emotional distress, prima facie tort, abuse of process, intentional interference with contractual relations, and violation of the Age Discrimination in Employment Act ("ADEA"). Claimant amended his Statement of Claim to withdraw the ADEA claim and to add claims of breach of implied duty of good faith and fair dealing, conversion, unjust enrichment in the nature of misappropriation of claimant's customer accounts, and violations of the Americans With Disabilities Act ("ADA").

Claimant, an experienced registered representative with over 22 years in the industry, alleged that he was hired by Respondent BMIG in December, 1993, pursuant to a written agreement which provided, inter alia, an eighteen-month enhanced payout on non-equities, involvement in management and training, stock options, and the right of claimant to designate a successor to his book of business in the event Claimant could no longer service the book. Claimant alleged that for the next two years, he worked diligently to develop an outstanding book of safe, conservative business in bonds, bond mutual funds, preferred stocks and other fixed income investments. Claimant alleged that he quickly became the firm's second largest producer, opening on average thirty new accounts a month, and by 1995, amassing a book of over 400 accounts with in excess of twenty million dollars in assets under management. Claimant alleged that during that same time, his enhanced payout was extended, the exercise price of his options was reduced, and management began discussions with him about making him president of the firm.

Claimant further alleged that between his hiring in December, 1993 and December, 1995, Claimant's business had not generated a single customer complaint. However, Respondents understood because of Claimant's previous regulatory record, that Claimant could not withstand another termination for cause, or another accusation of unauthorized or improper trading. Claimant alleged that in December, 1995, Respondents terminated Claimant for "alleged unauthorized trading" in connection with what Respondents claimed were several oral customer complaints of purchases of an equity mutual fund by the name of American Growth Fund which the customers had not requested. Claimant asserted that Respondents claimed to have received oral complaints during the week that Claimant was on vacation in Cancun, Mexico, on a trip sponsored by the mutual fund distributor. Therefore, upon learning of the "alleged complaints" for the first time upon his return from vacation, Claimant denied making any unauthorized trades on behalf of his customers. Nonetheless, Claimant alleged that one day after returning from

vacation, he was terminated. Claimant alleged that at this same time, he was experiencing emotional difficulties arising out of a domestic dispute known to, and acknowledged by, Respondents.

In the month following Claimant's termination, he contended that he attempted to transfer his book of business to another account executive at BMIG and he had an offer, confirmed in writing, to do so. Instead, Claimant alleged that Respondents Flesher and Frazier took over Claimant's book of business and divided it up primarily between themselves. Claimant alleged that during the same time, Respondents filed a U-5 termination notice attributing "alleged unauthorized trades" to Claimant and terminating him for cause. However, Claimant alleged that the termination notice, failed to provide any explanation of the basis for Respondents' conclusion that Claimant had engaged in unauthorized trades and it failed to identify any investigation into the stated basis for termination as required by the NASD.

Claimant alleged that in the days, weeks and months following Claimant's termination, Respondents also made false statements to several of Claimant's customers and at least one business associate that Claimant was out of the securities business because he had suffered a nervous breakdown. At the time, Claimant asserted Respondents knew that while Claimant was experiencing emotional difficulties, exacerbated by his firing, he had not had a nervous breakdown. Claimant contended that Respondents also knew that unless they provided him counsel, Claimant was likely to be sanctioned in the near future by the New York Stock Exchange for prior regulatory problems. Thus, Claimant alleged that Respondents knew that with the filing of his U-5, Claimant would not be able to obtain another position in the industry to compete with Respondents for his book of business. Claimant asserted that as a further result of the filing of the U-5, the Securities & Exchange Commission undertook an investigation of Claimant and instituted proceedings against him; which proceedings were still pending at the conclusion of the arbitration.

Respondents denied allegations of wrong-doing as alleged in the Statements of Claim. Respondents maintained that while Claimant was on a promotional vacation paid by the American Growth Fund in November 1995 for having sold at least \$200,000.00 of the Fund, BMIG received customer complaints that Claimant had made purchases in the Fund and other investments without customer authorization. Respondents maintained that upon Claimant's return, BMIG confronted him with the unauthorized trades, which he admitted making, and terminated his employment. BMIG asserted that it accurately filed a Form U-5 indicating "alleged unauthorized trading" as the reason for Claimant's discharge.

Respondents maintained that the "letter of understanding" between BMIG and Claimant did not contain a definite term of employment and therefore, did not constitute an employment contract and could be terminated at will by BMIG. Respondents further maintained that even if there had been an employment contract between BMIG and Claimant, Claimant's termination was based on just cause. Respondents contended that Claimant's former customers unequivocally stated that Claimant executed unauthorized transactions in their accounts and as this is a serious securities law violation, the proper supervisory response is termination. Therefore, BMIG did not breach any contract of employment in Claimant's termination.

In addition, Respondents maintained that Claimant's book of business was not misappropriated, as industry custom leaves no doubt that an agent's book of business is the property of the principal. Respondents maintained that as Claimant was fired for just cause and his book of business belonged to BMIG, BMIG could not be "unjustly enriched". In addition, Claimant's allegations of fraud require proof of a false representation with the intent of misleading another into relying on it, and justifiable reliance by the Claimant on the representation; not of which fit the facts of Claimant's claims. Therefore, it was appropriate and necessary that BMIG assigned Claimant's book to other brokers to service the accounts.

Respondents maintained that at no time was Claimant defamed. Respondents asserted that the phrase "nervous breakdown" does not constitute defamation per se and Claimant has not shown that Respondents published the words or that any witness thought anything less of Claimant as a result of hearing the alleged statement by Frazier. Respondents asserted that while Frazier used that term to another person, Claimant had, by then, been involuntarily committed to a mental health facility for a severe mental disability. Therefore, the truth of Claimant's condition was equivalent to, or worse than, the alleged false statement. In addition, Respondents contended that the statement on the Form U-5 was accurate and what's more, is privileged. Respondents maintained that truth is a defense to defamation.

Respondents maintained that Claimant cannot prevail on his ADA claim because Respondents' management did not know, and Claimant did not show that Respondents knew, of Claimant's mental impairment that substantially limited him in his ability to work and then fired him for it. Respondents contended that they did not perceive him as unable to do his job due to a mental or medical condition and then fired him for that reason. Respondents maintained that Claimant was terminated for unauthorized trading in customers' accounts.

RELIEF REQUESTED

Claimant requested damages of (1) compensation for his lost book of business in the minimum amount of One Hundred Ninety-Nine Thousand, Four Hundred and Eighty Dollars (\$199,480.00), (2) compensation for seventeen years of lost business opportunity as a result of his wrongful termination in the amount of Two Million Two Hundred and Thirteen Thousand, and Two Hundred and Ninety-Five Dollars (\$2,213,295.00), (3) punitive damages in an undetermined amount for Respondents' common law defamation and in the amount of Fifty Thousand Dollars (\$50,000.00) for Respondents' violation of the Americans With Disability Act, (4) interest, and (5) attorney's fees. Claimant also sought equitable relief in the nature of an accounting for commissions earned by Respondents on his book of business following termination to the date of the hearing, and the cost of career counseling.

Respondents requested dismissal of all Claimant's claims; Respondents costs of \$11,784.22 incurred in reversing Claimant's unauthorized trades and their fees and costs in defending this action including their attorney's fees.

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 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. That Respondent BMIG is liable to and shall pay to Claimant \$60,000.00 on the contract claims, exclusive of interest. The claims on defamation and age discrimination are denied; and
2. That the claim for punitive damages is denied; and
3. That the Counterclaim is denied; and
4. That each party shall bear its own costs and expenses, including attorneys' fees, with the exception of Forum Fees as specified below; and
5. That any relief not specifically addressed herein is denied.

OTHER COSTS

Pursuant to Rule 10333 Respondent BMIG is assessed a member surcharge of \$500.00, which assessment has been paid.

FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 Prehearing Session (single arbitrator) x \$300.00 =	\$ 300.00
16 Hearing Sessions x \$1,000.00 =	<u>\$16,000.00</u>
Total Forum Fees	\$16,300.00

Forum Fees are assessed at twenty-five percent to each party.

Claimant has an assessment of \$4,075.00, less the \$1,000.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net Forum Fee assessment due from Claimant of \$3,075.00.

Respondent BMIG has an assessment of \$4,075.00, less the \$1,000.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net Forum Fees assessment due from BMIG of \$3,075.00. Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

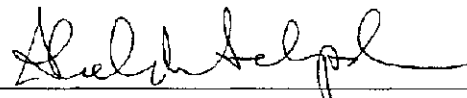
Respondent Flesher has a Forum Fee assessment due of \$4,075.00.

Respondent Frazier has a Forum Fee assessment due of \$4,075.00.

DATE

4/1/98

CONCURRING ARBITRATORS' SIGNATURES



Sheldon Seligsohn, Presiding
Public Arbitrator

Edward Greer
Public Arbitrator

Stephen T. Mayhew
Industry Arbitrator

Date Decision Served by NASD Regulation:

April 9, 1998

DATE

CONCURRING ARBITRATORS' SIGNATURES

3/31/98

Sheldon Seligsohn, Presiding
Public Arbitrator

Edward Greer
Edward Greer
Public Arbitrator

Stephen T. Mayhew
Industry Arbitrator

Date Decision Served by NASD Regulation:

April 9, 1998

DATE

CONCURRING ARBITRATORS' SIGNATURES

Sheldon Seligsohn, Presiding
Public Arbitrator

Edward Greer
Public Arbitrator

March 31, 1998


Stephen T. Mayhew
Industry Arbitrator

Date Decision Served by NASD Regulation:

April 9, 1998