

**AWARD**

**NASD REGULATION INC., OFFICE OF DISPUTE RESOLUTION**

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In the Matter of the Arbitration Between

**Name of Claimants**

John Eberle;  
Aileen Bolger

96-04059

**Name of Respondents**

Duff & Phelps Securities Co.;  
Phoenix Duff & Phelps

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**REPRESENTATION**

For Claimant: John Eberle ("Eberle") and Aileen Bolger ("Bolger") were represented by Robert A. Graves, Esq. of Menges, Mikus & Molzahn, located in Chicago, Illinois.

For Respondent: Duff & Phelps Securities Co. and Phoenix Duff & Phelps were represented by Ronald Lepinkas, Esq. of Lord Bissell & Brook, located in Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed: September 12, 1996.

Claimants' Submission Agreement signed on: September 9, 1996.

Statement of Answer filed by Respondents on: December 13, 1996.

Respondent Phoenix Duff & Phelps's Submission Agreement signed on: December 11, 1996.

Respondent Duff & Phelps Securities Co. did not file an executed submission agreement.

**HEARING INFORMATION**

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: March 13, 1997 for Two (2) sessions.

Hearing Location: Chicago, Illinois.

### **CASE SUMMARY**

Claimants alleged that they were wrongfully denied accrued bonus payments which were due them after termination of their employment with Duff & Phelps Securities Co. and Phoenix Duff & Phelps. Mr. Eberle was the Managing Director for the equity trading desk at Duff & Phelps Securities Co. (a subsidiary of Phoenix Duff & Phelps) and Ms. Bolger was an equity trader at the equity trading desk, and the bonus they claim is due to them pursuant to their employment agreements is based on the revenues generated by the trading desk prior to the time the desk's operations were terminated on May 14, 1996.

Respondents denied the material allegations of the Statement of Claim, alleging that the equity trading desk employees, including Claimants Eberle and Bolger, were not entitled to a bonus unless and until 1996 equity trading desk revenues exceeded \$4 million in non-affiliate trades (the \$4 million hurdle"). The Respondents contend that the \$4 million hurdle was an express condition of their employment. The Respondents further contend that in filing their Statement of Claim, the Claimants seek a windfall bonus without regard to their employment agreements and without regard to the contributions they made to the profitability of Duff & Phelps Securities Co. The Respondents contend that the Claimants' denial of the \$4 million hurdle is demonstrably false. Because the 1996 equity trading desk revenues never exceeded \$4 million in non-affiliate trades (the Claimants and Respondents have stipulated that the net revenues for the trading desk prior to termination were \$574,969.86), the Respondents contend that the Claimants should be denied any recovery on their claim.

The Claimants deny that either of them agreed to the alleged \$4 million hurdle as a term of their employment agreement and further deny that the Respondents can enforce the alleged hurdle as a defense given the circumstances of this case.

### **RELIEF REQUESTED**

Claimants requested an award for Eberle in the sum of \$57,496.98 and for Bolger in the sum of \$22,998.80, pursuant to the terms of their bonus agreements. The claimants further seek an award for their attorneys' fees incurred in this matter (\$9,135.00 for Eberle and \$8,595.00 for Bolger) pursuant to Illinois statute (705 ILCS 225/1) and award of their forum fees, costs and expenses.

Respondents requested that the arbitrators deny the Statement of Claim and grant such further relief as is just and proper.

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

Respondent Duff & Phelps Securities Co. did not file an executed submission agreement, but is

required to submit to arbitration pursuant to Section 10201 of the Code of Arbitration Procedure.

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 and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Duff & Phelps Securities Co. and Phoenix Duff & Phelps are jointly and severally liable for and shall pay to Claimant Aileen Bolger the sum of \$22,998.00 as actual damages;
2. In addition, Respondents Duff & Phelps Securities, Inc. and Phoenix Duff & Phelps are jointly and severally liable for and shall pay to Claimant Aileen Bolger the sum of \$8,595.00 as attorneys' fees. In deciding to award attorneys' fees, the panel considered the arguments of the parties, as well as Illinois statute (705 ILCS 225/1), and determined that authority existed for an award of attorneys' fees to Claimant Aileen Bolger;
3. The claims asserted by Claimant John Eberle are dismissed with prejudice and denied in the entirety;
4. Any remaining costs of arbitration, including any additional attorneys' fees, shall be borne by the party incurring the cost; and
5. Any relief not specifically awarded is hereby denied.

### **OTHER COSTS**

Pursuant to Section 10333 of the Code of Arbitration Procedure, Respondent Duff and Phelps Securities Inc. is liable for and shall pay to the NASD Regulation Inc., Office of Dispute Resolution the member surcharge in the sum of \$300.00.

### **FORUM FEES**

Pursuant to Section 10205 of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) hearing sessions x \$600.00 per hearing session = \$1,200.00.

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The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$500.00 claim filing fee paid by the Claimants and refund the \$600.00 hearing session deposit deposited by the Claimants, John Eberle and Aileen Bolger. Respondents Duff & Phelps Securities Co. and Phoenix Duff & Phelps are jointly and severally liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution, the sum of \$1,200.00 as forum fees.

Concurring Arbitrators' Signatures

Name

Date:

/s/ John E. Parkes, Jr. \_\_\_\_\_

April 3, 1997

John E. Parkes, Jr.

Industry Arbitrator, Chairperson

/s/ Gerald E. Pelzer \_\_\_\_\_

April 8, 1997

Gerald E. Pelzer

Industry Arbitrator

Dissenting Arbitrator's Signature

Mr. Rizzo dissents from the majority decision regarding Claimant Bolger, but concurs in the decision regarding Claimant Eberle.

/s/ Frederic M. Rizzo \_\_\_\_\_

April 1, 1997

Frederic M. Rizzo

Industry Arbitrator