

NASD REGULATION, INC. AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Alex Feldman

96-04587

Name of Respondents

Joseph Dillon & Company Inc.
Steven Jaloza
Salvatore Fradella
Oleg Ferdman

REPRESENTATION

For Claimant Alex Feldman ("Claimant") appeared Shari B. Kibel, Esq. and Martin P. Unger, Esq. of the firm Tenzer Greenblatt, LLP, located in New York, New York.

For Respondents Joseph Dillon & Company ("Dillon"), Steven Jaloza ("Jaloza"), Salvatore Fradella ("Fradella") and Oleg Ferdman ("Ferdman") appeared Brian D. Graifman, Esq., Chase A. Caro, Esq., and Eva M. Possavino, Esq. of the firm Caro & Graifman, located in New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on October 15, 1996. Claimant's Submission Agreement was signed on October 8, 1996. Claimant filed an Amended Statement of Claim on March 17, 1997.

Respondent Dillon's Statement of Answer and Counter-claim was filed on December 12, 1996. Respondent Dillon failed to submit a properly executed Submission Agreement.

Respondents Jaloza, Fradella and Ferdman filed a Statement of Answer on April 21, 1997. Respondent Jaloza's Submission Agreement was signed on December 12, 1997. Respondent Fradella failed to submit a properly executed Submission Agreement. Respondent Ferdman failed to submit a properly executed Submission Agreement.

Claimant filed a Reply to Counter-claims on January 10, 1997.

HEARING INFORMATION

Hearing Dates/Sessions:	August 12, 1997	Two Sessions
	August 13, 1997	Two Sessions
	August 14, 1997	Two Sessions

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

CASE SUMMARY

Claimant alleged that his employment with Respondent Dillon as a Senior Account Executive was terminated by Dillon on June 21, 1996. Claimant further alleged that, to date, Dillon, despite a contractual obligation and due demand by Claimant, has maliciously failed and refused to pay him his earned wages, which amount to \$45,486.61. Claimant alleged that such conduct by Dillon constitutes breach of contract for which he can sue for compensation under the contract or, alternatively, entitles him to appropriate relief for unjust enrichment and/or restitution and/or quantum meruit.

Claimant further alleged that Dillon's failure and refusal to pay the same, constitutes a willful and bad faith breach of its contractual obligations to Claimant, thereby entitling him to payment of his earned wages plus, pursuant to New York's Labor Law, 25% additional (statutory) damages and reasonable attorneys' fees.

Claimant further alleged that Respondents Dillon, Jaloza and Ferdman have defamed him by deliberately making knowingly false statements to Claimant's former customers concerning Claimant's business conduct; statements such as, among others, that Claimant deals with "scam stocks," "has a history of charging excessive commissions" and that he is currently the "subject of an SEC investigation," all of which are statements that Claimant was guilty of misconduct, dishonesty and fraud as a broker (all of which is untrue). Claimant further alleged that Jaloza and Ferdman made such false utterances to Claimant's former customers for the sole purpose of injuring and prejudicing Claimant's reputation and stealing his customers for themselves and Dillon. Claimant further alleged that Dillon, Jaloza and Ferdman's wanton, malicious and intentional defamation of Claimant has caused Claimant to lose customer accounts to Dillon and has forced him to leave the brokerage business. Claimant has further alleged that, as a result of such defamation, he has suffered, and continues to suffer, far-reaching harm to his reputation and untold damages to his career as a broker as well as mental anguish and marital discord so severe that he has been, and currently is, in medical therapy for these problems.

Respondents denied the allegations of the Statement of Claim, and during the hearing on this matter, Claimant conceded to dismiss the action as against Respondent Salvatore Fradella.

Respondent Dillon also asserted counterclaims, sounding in (i) breach of contract and (ii) unjust enrichment and/or restitution. Specifically, Respondent Dillon alleged that Claimant was indebted to it for various sums advanced, along with expenses and costs, pursuant to the terms of oral and written agreements he made with Dillon. Respondent Dillon also alleged that the contract was for a one (1) year term, and that Claimant resigned prior to that one (1) year, thus breaching the contract.

RELIEF REQUESTED

Claimant requested: (1) the entry of an award in an amount to be determined on his compensation claim; (2) statutory sanctions under New York's Labor Law; (3) compensatory damages, jointly and severally, on his defamation claim in an amount not less than \$4,000,000.00; (4) punitive damages; (5) reasonable attorneys' fees, costs, disbursements, and (6) such other and further relief as the arbitrators may deem just and proper.

Respondent Dillon requested an amount to be determined at the hearing, but no less than \$19,453.74. All Respondents requested dismissal of all claims for relief with prejudice, attorneys' fees, costs of suit, and such other and further relief as the panel may deem equitable and just.

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.

Chairperson Melvin Lyon reviewed and ruled on Motion to Compel on the papers June 30, 1997.

Panel denied motion to dismiss Claimant's request for 25% additional damages and attorneys' fees under New York Labor Law. Motion was made in Respondent's post-hearing brief.

Salvatore Fradella was withdrawn as a Respondent by the Claimant.

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. Respondents Dillon, Jaloza and Ferdman are hereby jointly and severally liable and shall pay to Claimant compensatory damages in the amount of \$46,000.00, plus interest in the amount of 9% starting from June 26, 1996.
2. Respondents Dillon, Jaloza and Ferdman are hereby jointly and severally liable and shall pay to Claimant attorneys' fees in the amount of \$10,000.00, under the authority of the New York State Labor Law, Section 198(1-a).
3. All other relief request are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. will retain the \$500.00 non-refundable filing fee submitted by the Claimant and the \$500.00 non-refundable filing fee submitted by Respondent Dillon, and have assessed the following forum fees:

Six Hearing Sessions x \$600.00	=	\$3,600.00
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The arbitrators have determined that the Claimant shall be responsible for one-half of total forum fees, and Respondents Dillon, Jaloza and Ferdman shall be jointly and severally liable for one-half of total forum fees.

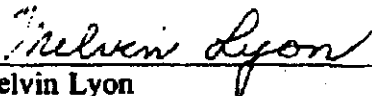
1. Claimant shall pay the sum of \$1,800.00, representing one-half the total forum fees assessed. Claimant previously deposited \$600.00 with NASD Regulation, Inc., and, therefore, Claimant shall pay the balance of \$1,200.00 to NASD Regulation, Inc.
2. Respondents Dillon, Jaloza and Ferdman shall jointly and severally pay the sum of \$1,800.00, representing one-half of total forum fees assessed. Respondent Dillon previously deposited \$100.00 with NASD Regulation, Inc., and, therefore, Respondents shall jointly and severally pay the balance of \$1,700.00 to NASD Regulation, Inc.

3. Respondent Dillon be and hereby is liable and shall pay the sum of \$200.00 for the Member Surcharge. Respondent Dillon has submitted the sum of \$200.00, and, therefore, does not owe the Member Surcharge.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

I, Melvin Lyon, 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.



Melvin Lyon
Public Chairperson

I, Leo Cooperman, CPA, 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.

Leo Cooperman, CPA
Public Panelist

I, John J. O'Neill, 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.

John J. O'Neill
Industry Panelist

Date of Decision: October 22, 1997

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John J. O'Neill
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