

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

---

In the Matter of the Arbitration Between

Name of Claimant

M.J. Whitman, Inc.

96-05205

Name of Respondent

Brian Bornstein

---

**REPRESENTATION**

For claimant M.J. Whitman, Inc. ("claimant") appeared its representative and in-house counsel, Ian G. Kirschner, Esq.

Respondent Brian Bornstein ("respondent") appeared Pro Se.

**CASE INFORMATION**

Statement of Claim filed: November 21, 1996.

Claimant's Submission Agreement signed on: November 20, 1996.

Statement of Answer filed by respondent on: January 21, 1997.

Respondent's Submission Agreement signed on: January 5, 1997.

**HEARING INFORMATION**

Hearing Dates/Sessions: June 13, 1997 two sessions

The hearings were conducted at the offices of the National Association of Securities Dealers Regulation, Inc. located at 125 Broad Street in New York, New York.

**CASE SUMMARY**

Claimant alleged that it entered into an Employment Agreement with respondent on September 19, 1995 wherein respondent agreed to sell it certain office equipment of which respondent had the option to repurchase upon termination of their employer/employee relationship. Claimant further alleged that on August 30, 1996, respondent terminated the relationship and exercised his repurchase option for a total of \$22,227.71. Claimant also alleged that it has been paying

for respondent's Bloomberg terminal and business owners insurance. Claimant contended that it has demanded payment for these items to no avail. Claimant further contended that as a result of the above, it has suffered losses for which the respondent should be held liable.

Respondent maintained that he entered into an employment agreement with claimant and terminated it on August 30, 1996 at which time he exercised an option to repurchase certain office equipment. Respondent further maintained that claimant owed him commissions and office expenses in the amount of \$13,444.24. Respondent also maintained that on November 11, 1996, Ian Kirschner drafted a memo which memorialized their agreement that he owed claimant a total of \$8,940.00. Respondent contended that he sent two payments to claimant but that they were returned and that claimant has eschewed his efforts to settle this dispute.

### **RELIEF REQUESTED**

Claimant requested \$23,584.92 in actual damages plus costs, attorney's fees, and such other and further relief as the panel deems just and equitable.

Respondent requested that he be held liable for an amount no greater than \$8,940.00.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Brain Bornstein be and hereby is liable and shall pay to claimant M.J. Whitman, Inc. \$8,940.00 in actual damages.
2. The parties shall bear their respective costs and attorney's fees.
3. All other relief requests are denied.

### **FORUM FEES**

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the arbitrator has determined that NASD Regulation shall retain the \$500.00 non-refundable filing fee previously deposited by claimant and have assessed the following forum fees:

two sessions x \$300.00	= \$600.00
minus claimant's \$300.00 deposit	= <u>\$300.00</u>
total outstanding	= \$300.00

Claimant M.J. Whitman, Inc. be and hereby is liable for the sum of \$600.00 representing the total amount of forum fees assessed. Claimant previously deposited \$300.00 with NASD Regulation. Therefore, claimant shall pay \$300.00 to NASD Regulation in satisfaction of outstanding forum fees.

ARBITRATOR'S SIGNATURE

I, Eva H. Posman, 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.

A handwritten signature in cursive script, appearing to read "Eva H. Posman", written over a horizontal line.

Eva H. Posman, Esq.  
Industry Chairperson

Date of Decision: July 8, 1997