

NASD REGULATION, INC. AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Jacques de Saint Phalle

vs.

Case No.
96-05214

Name of Respondent

BT Securities Corporation

REPRESENTATION

For Claimant Jacques de Saint Phalle ("Claimant") appeared Daniel A. Pollack, Esq., of the firm Pollack & Kaminsky with offices located in New York, New York.

For Respondent BT Securities Corporation ("Respondent") appeared Kenneth Turnbull of the firm O'Melveny & Meyers with offices located in New York, New York.

CASE INFORMATION

Statement of Claim filed on: November 21, 1996.

Amended Statement of Claim filed on: January 22, 1997.

Claimant's Submission Agreement signed on: November 21, 1996.

Statement of Answer filed by Respondent on: February 04, 1997.

Respondent Submission Agreement signed on: February 04, 1997.

HEARING INFORMATION

| | | |
|-------------------------|------------------|--------------|
| Hearing Dates/Sessions: | October 15, 1997 | Two Sessions |
| | October 16, 1997 | Two Sessions |
| | October 17, 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 in an attempt to avoid paying him a bonus for 1995, Respondent abruptly terminated his employment under false pretenses, two weeks before the end of the 1995 compensation year. Claimant further alleged that since his termination Respondent has refused to pay the bonus or compensate him for the loss of stock options that had not vested. Claimant also alleged that Respondent

has repeated the false and defamatory statements about the cause of his termination to others. Claimant asserted that Respondent stated the grounds for his termination as failure to stop the alleged misbehavior of a subordinate, Kevin Reynolds ("Reynolds"). Claimant further asserted that when the complaint about Reynolds conduct was brought to his attention he admonished him and then transferred him. Claimant also asserted that he was not given prior warning that Respondent deemed his handling of the situation inadequate and that he faced termination and the loss of his bonus as a result. Claimant stated that he protested the grounds of his termination and requested that Respondent not list it on his Form U-5. Claimant further stated that Respondent agreed to do so only if he would drop all claims with respect to his bonus. Claimant also stated that when he refused, and Respondent filed his Form U-5 in an action that was malicious, willful, and intentional.

Respondent maintained that Claimant was terminated because of his failure to properly supervise and manage the appalling, inappropriate, insulting, and degrading behavior of his subordinate, Reynolds. Respondent further maintained that Claimant, through his words and actions, condoned and encouraged the behavior of Reynolds. Respondent also maintained that Claimant also engaged in behavior that was similarly appalling, inappropriate, insulting, and degrading to the other members of the group. Respondent stated that Claimant's behavior, and that of his subordinate, violated state and federal laws including, sexual discrimination, sexual harassment, pregnancy discrimination, race discrimination, color discrimination, national origin discrimination, and retaliation. Respondent further stated that this behavior exposed the firm to serious financial and legal liability, and therefore, it properly terminated Claimant's employment. Respondent also stated that they learned of his behavior in early November 1995, conducted a human resources investigation, and as a result of that investigation terminated Claimant's employment in mid-November. Respondent maintained that they offered Claimant the opportunity to resign, and when he refused they legally and properly terminated his employment. Respondent further maintained that Claimant was not eligible for a 1995 bonus since he was not employed as of December 31, 1995, and that since he was terminated before his options vested, they were automatically forfeited. Respondent also maintained that even if Claimant was employed as of December 31, 1995, the payment of a bonus and the amount were at the discretion of the firm.

RELIEF REQUESTED

Claimant requested:

- (a) Claimant's 1995 bonus, in the amount of \$1,000,000.00, plus interest.
- (b) any and all other and further damages caused him, including (without limitation) the lost value of his 6,608 options for Bankers Trust stock and an additional \$1,000,000.00 for BT Securities's defamation of him, all plus interest.
- (c) punitive damages of \$1,000,000.00.
- (d) the further liquidated damages (i.e., additional damages equal to 25% of the total compensation due him) and other relief (e.g., attorneys' fees) provided for under N.Y. Labor Law section 198.
- (e) such other relief and damages as the Arbitrators deem just and appropriate.
- (f) the costs and expenses of this proceeding.

Respondent requested that the Statement of Claim be dismissed in its entirety, that they be awarded costs, fees, including attorneys' fees, expenses, and all other relief as the panel deems just and fair.

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

1. Respondent be and hereby is liable and shall pay to Claimant 5,000 shares of Bankers Trust common stock.
2. Claimant's request for damages on the bonus claim, defamation claim, and under New York Labor Law is hereby denied.
3. Claimant's request for punitive damages is hereby denied.
4. All other requests for attorneys' fees are hereby denied.
5. Each party shall bear their own costs.
6. Forum fees are to be assessed equally between Claimant and Respondent.
7. All further requests for relief are hereby denied.

FORUM FEES

Pursuant to Rule 10332 of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$500.00 non-refundable filing fee deposited by Claimant and the \$500.00 Member Surcharge deposited by Respondent and have assessed the following forum fees:

| | | |
|---------------------------------|---|------------|
| 6 Hearing Sessions x \$1,000.00 | = | \$6,000.00 |
| Total Forum Fees | = | \$6,000.00 |

1. Claimant be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$3,000.00 representing 50% of the total forum fees assessed. Claimant deposited \$1,500.00 with the NASD, and therefore, Claimant shall pay the balance of \$1,500.00.
2. Respondent be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$3,000.00 representing 50% of the total forum fees assessed.

Fees are payable to NASD Regulation, Inc..

ARBITRATORS' SIGNATURES

I, Allen Kilik, 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.



Allen Kilik, Esq.
Public Chairperson

I, Lydia O. Bishop, 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.

Lydia O. Bishop
Public Panelist

I, Theodore Moreines, 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.

Theodore Moreines
Industry Panelist

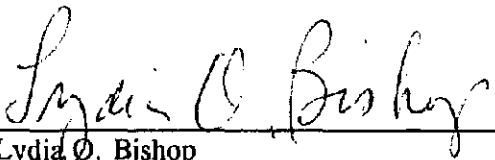
Date of Decision: December 15, 1997

ARBITRATORS' SIGNATURES

I, Allen Kilik, 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.

Allen Kilik, Esq.
Public Chairperson

I, Lydia O. Bishop, 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.



Lydia O. Bishop
Public Panelist

I, Theodore Moreines, 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.

Theodore Moreines
Industry Panelist

Date of Decision: December 15, 1997

Page Four
Award 96-05214

ARBITRATORS' SIGNATURES


I, Allen Kilik, 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.

Allen Kilik, Esq.
Public Chairperson

I, Lydia O. Bishop, 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.

Lydia O. Bishop
Public Panelist

I, Theodore Moreines, 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.



Theodore Moreines
Industry Panelist

Date of Decision: December 15, 1997