

NASD REGULATION AWARD

970813

In the Matter of the Arbitration Between

Name of Claimant

Brendan McCarthy

96-05636

Name of Respondents

Lehman Brothers Inc.
Gerry Tamburro

REPRESENTATION

Claimant Brendan McCarthy ("Claimant") appeared pro se.

For Respondents Lehman Brothers Inc. and Gerry Tamburro ("Respondents") appeared Thomas E. Hommel, Esq., in-house counsel for Lehman Brothers Inc., located in New York, NY.

CASE INFORMATION

The Statement of Claim was filed on December 16, 1996.
Claimant's Submission Agreement was signed on December 17, 1996.

Respondents' Statement of Answer was filed on February 26, 1997.
Respondent Lehman Brothers's Submission Agreement was signed on January 23, 1997.
Respondent Tamburro's Submission Agreement was signed on January 30, 1997.

HEARING INFORMATION

Hearing Date/Sessions: June 30, 1997 One Session

The hearing was conducted at the offices of NASD Regulation, Inc. located in New York, NY.

CASE SUMMARY

Claimant alleged that after his involvement in a dispute with senior management at a customer function, Respondent Tamburro, acting on behalf of Respondent Lehman Brothers Inc., released him from their employ on the grounds of misconduct. Claimant alleged that after nine years of service this action was unwarranted. Claimant further alleged that, although his conduct was unprofessional, the actions of the Respondents in ending his employment were unfair. Claimant maintained that the bonus that the Respondents paid every year was part of a total compensation package and, therefore, he was entitled to the percentage of the year end bonus for the months before his termination. Claimant alleged that at no time was he made aware of a policy that stated that employees must be actively employed on the date that bonus payments are made.

Respondents' maintained that Claimant was involved in a dispute with his superior at a business function where clients of the firm were present. Respondents' further maintained that at no time did Claimant deny his participation in the dispute. Respondents' alleged that due to this incident Claimant was notified of his release from service with Respondent Lehman Brothers. Respondents' maintained that their policy for being eligible to receive a bonus provides that an employee must be actively employed at the time the bonus is paid. Respondents' further maintained that the Claimant was not actively employed at the time of the distribution of the bonuses and, further, that due to Claimant's behavior the amount of his bonus and whether he would receive a bonus was at the discretion of his superiors.

RELIEF REQUESTED

Claimant requested an award of \$50,000.

Respondents' requested that the Statement of Claim be dismissed in its entirety and that Claimant be responsible for the costs of the proceeding.

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 original remains on file with NASD Regulation, Inc.

Prior to the hearing Claimant requested that his claims against Respondent Gerry Tamburro be withdrawn from these proceedings.

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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. Claimant's complaint is dismissed in its entirety.
2. Each party shall bear their respective costs, including attorney's fees.
3. Respondent, Lehman Brothers be and hereby is liable for, and shall pay to Claimant, the sum of \$300.00 to reimburse Claimant for a portion of the filing fees previously deposited with NASD Regulation, Inc.

FORUM FEES

Pursuant to Rule 10332 of the NASD Regulation, Inc. Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 filing fee previously paid by the Claimant and have assessed the following Forum Fees:

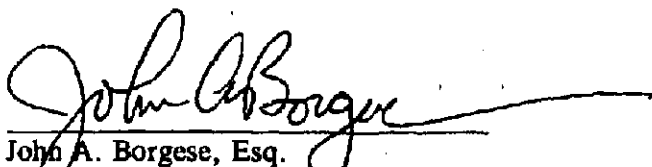
1 Hearing Session	x	\$600.00	=	\$600.00
Total Forum Fees			=	\$600.00

Claimant be and hereby is liable for the sum of \$300.00 representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$600.00 with NASD Regulation, Inc. and, therefore, owes nothing in forum fees.

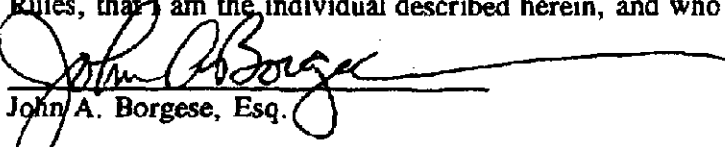
Respondent, Lehman Brothers, be and hereby is liable for the sum of \$300.00, representing one-half of the total amount of forum fees assessed. Respondent shall pay Claimant the sum of \$300.00 as provided in the "Award" section above. In addition, Respondent, Lehman Brothers, be and hereby is liable and shall pay the sum of \$300.00 for the Member Surcharge. Lehman Brothers has submitted the sum of \$300.00 and, therefore, does not owe the Member Surcharge.

9/10/97

ARBITRATORS' SIGNATURES


John A. Borgese, Esq.
Industry Arbitrator - Chairperson

I, John A. Borgese, 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 A. Borgese, Esq.

Sheldon Lasher
Industry Arbitrator

I, Sheldon Lasher, 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.

Sheldon Lasher

Ellen S. Saltzman, Esq.
Industry Arbitrator

I, Ellen S. Saltzman, 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.

Ellen S. Saltzman, Esq.


Date of Decision: August 29, 1997

ARBITRATORS' SIGNATURES

John A. Borgese, Esq.
Industry Arbitrator - Chairperson


I, John A. Borgese, 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 A. Borgese, Esq.



Sheldon Lasher
Industry Arbitrator

I, Sheldon Lasher, 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.



Sheldon Lasher

Ellen S. Saltzman, Esq.
Industry Arbitrator

I, Ellen S. Saltzman, 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.

Ellen S. Saltzman, Esq.

Date of Decision: August 29, 1997

9/10/97

ARBITRATORS' SIGNATURES

John A. Borgese, Esq.
Industry Arbitrator - Chairperson


I, John A. Borgese, 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 A. Borgese, Esq.

Sheldon Lasher
Industry Arbitrator

I, Sheldon Lasher, 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.

Sheldon Lasher



Ellen S. Saltzman, Esq.
Industry Arbitrator

I, Ellen S. Saltzman, 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.



Ellen S. Saltzman, Esq.

Date of Decision: August 29, 1997