

In the Matter of the Arbitration Between

Name of Claimant

Joshua Slovik

96-05769

Name of Respondents

*Wasserstein Perella & Co., Inc.
Wasserstein Perella Group, Inc.

REPRESENTATION

For Claimant Joshua Slovik ("claimant") appeared Robert L. Begleiter, Esq. of the law firm of Constantine & Partners located in New York City, New York.

For Respondents Wasserstein Perella & Co., Inc. and Wasserstein Perella Group, Inc. ("respondents") appeared Jill L. Rosenberg, Esq. of the law firm of Orrick, Herrington & Sutcliffe LLP located in New York City, New York.

CASE INFORMATION

The Statement of Claim was filed on December 23, 1996.
Claimant's Submission Agreement was signed on December 20, 1996.

A Joint Statement of Answer was filed by Respondents on February 18, 1997.
Respondent Wasserstein Perella & Co., Inc.'s Submission Agreement was signed on February 18, 1997.
Respondent Wasserstein Perella Group, Inc.'s Submission Agreement was signed on February 18, 1997.

HEARING LOCATION

Hearing Date/Sessions: July 15, 1997 - 2 Sessions

The hearing was held at Club Quarters Hotel, 52 William Street located in New York City, New York.

CASE SUMMARY

Claimant commenced this arbitration by Statement of Claim dated December 23, 1996. In it, he alleges that Respondents breached an agreement to pay him \$25,000 in 1995 year-end compensation that they had unequivocally agreed to pay. Claimant alleges that Respondents unilaterally added a condition that Claimant's year-end compensation was forfeitable if he was not employed by Respondents for an additional period after year's-end.

On February 8, 1995, Claimant accepted a position as a Vice President with Respondents. Respondents offered the position in a letter dated that day, which, *inter alia*, indicated that Claimant would receive year-end compensation of at least \$180,000. A portion (20-30%) of that compensation was to be in the

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form of participation in Respondents' deferred compensation plans. The offer letter did not indicate that any portion of the year-end compensation would be subject to forfeiture. Claimant was not provided with any documents prior to his accepting employment with Respondents that indicated that any part of his year-end compensation could be forfeited. Moreover, prior to accepting his position with Respondents, on February 8, 1995 Claimant spoke with several of Respondents' employees and a headhunter acting as Respondents' agent. None of the individuals that Claimant spoke with indicated that any portion of the year-end compensation was subject to forfeiture.

Claimant was eligible for year-end compensation and received all but \$25,000 of it. The remaining \$25,000 of the year-end compensation was offered as a Note, payable with 7% interest from January 1, 1996, provided that the Claimant was still employed by Respondents on June 30, 1997. The Note and an accompanying Guaranty Agreement contained a forfeiture provision which directed that the \$25,000 in year-end compensation was forfeited in the event Claimant was not employed by Respondents by June 30, 1997.

Claimant did not sign any documents agreeing to a forfeiture of any portion of his year-end compensation or otherwise agree to such forfeiture.

Claimant left the employ of Respondents in March 1996. Claimant has been refused the full \$25,000 in year-end compensation to which he is entitled.

Respondents' unilateral attempt to impose a forfeiture provision to their unequivocal promise to pay the full year-end compensation due Claimant for 1995 is contrary to law.

Claimant contends that he is entitled to \$25,000 in deferred compensation in connection with his employment at Wasserstein Perella & Co., Inc. ("Wasserstein" or the "Firm"). Respondents deny that Claimant is entitled to same.

Claimant was employed as a Vice President in the Food/Consumer Products Group of Wasserstein in New York from March 6, 1995 until his voluntary resignation on March 14, 1996. At the time of his hire, Claimant was offered a compensation package typical of that provided to officer-level employees of Wasserstein. That offer, which was in writing, included, *inter alia*, the opportunity to participate in the Firm's deferred compensation plans. Specifically, Claimant's offer letter provided that Claimant would receive 1995 year-end compensation in two forms — 70-80% would be paid in cash and 20-30% would be in the form of "participations in [the Firm's] deferred compensation plans." Consistent with one of the primary purposes of deferred compensation plans (to provide an incentive for key employees to remain with a company), the Wasserstein plan provided — as deferred compensation plans generally do — that an employee would be required to remain employed by the Firm through a certain future date (in Claimant's case June 30, 1997) in order to receive compensation under the plan. Since Claimant left the Firm well before that date, under the express terms of the plan he forfeited any right he might have to that compensation.

Claimant contends that he was not aware of the forfeiture provision at the time of his hire and therefore it cannot be applied to him. In any event, Claimant's purported ignorance is not relevant to whether he is entitled to deferred compensation under the Firm's plan. The plan was in writing and available for Claimant to review, receive or discuss with Wasserstein management at the time of his hire. Claimant failed to do any of these things. Accordingly, Claimant's claim for \$25,000 in deferred compensation should be denied.

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RELIEF REQUESTED

Claimant requested compensatory damage in the sum of \$25,000.00 together with interest from January 1, 1996, his costs, disbursements and attorneys' fee incurred in this proceeding.

Respondents' requested that Claimant's claims be dismissed in its entirety.

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 the NASD Regulation.

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 are jointly and severally liable and shall pay to the Claimant in the sum of \$25,000.00 with interest to be accrued at the legal rate from March 14, 1996.
2. All other relief requests are hereby denied.
3. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 filing fee and have assessed the following forum fees:

| | | |
|------------------------------|---|------------|
| 2 sessions x \$600.00 | = | \$1,200.00 |
| Less Hearing Session Deposit | = | \$ 600.00 |
| Total outstanding | = | \$ 600.00 |

Respondents are hereby liable jointly and severally and shall pay to the NASD Regulation, Inc. the sum of \$600.00 being the balance of the total forum fees assessed. Claimant previously deposited \$600.00 with NASD Regulation, Inc. Respondent shall pay to Claimant the sum of \$600.00 as reimbursement of the hearing session deposit.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURE

I, **Bill T. Singer, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.



Bill T. Singer, Esq.
Industry - Chairperson

Date of Decision 9/15/97

I, **C. Anthony Bell**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above-captioned matter.

C. Anthony Bell
Industry Arbitrator

I, **Louis H. Milon, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above-captioned matter.

Louis H. Milon, Esq.
Industry Arbitrator

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ARBITRATORS' SIGNATURE

I, **Bill T. Singer, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above-captioned matter.

Bill T. Singer, Esq.
Industry - Chairperson

I, **C. Anthony Bell**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above-captioned matter.

C. Anthony Bell
C. Anthony Bell
Industry Arbitrator Date of Decision 9/15/97

I, **Louis H. Miron, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above-captioned matter.

Louis H. Miron, Esq.
Industry Arbitrator

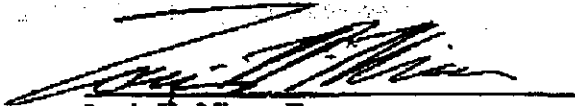
I, Bill T. Singer, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

Bill T. Singer, Esq.
Industry - Chairperson

I, C. Anthony Bell, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above-captioned matter.

C. Anthony Bell
Industry Arbitrator

I, Louis H. Miron, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.



Louis H. Miron, Esq.
Industry Arbitrator

Date of Decision 9/15/97