

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Kenneth D. Phillips

vs.

Case No. 98-00277

Name of Respondent

Lehman Brothers Inc.

REPRESENTATION OF PARTIES

Claimant Kenneth D. Phillips ("Claimant") was represented by Edward T. Joyce, Esq. and Alexander T. Moore, Esq. of the law firm of Edwards T. Joyce & Associates, P.C., Chicago, IL.

Respondent Lehman Brothers Inc. ("Respondent") was represented by Theodore A. Krebsbach, Esq. of the law firm of Theodore A. Krebsbach & Associates, P.C., New York, NY.

CASE INFORMATION

Statement of Claim filed on: January 21, 1998.

First Amended Statement of Claim filed on: March 10, 1998.

Second Amended Statement of Claim filed on: April 3, 1998.

Third Amended Statement of Claim filed on: November 16, 1998.

Claimant signed the Uniform Submission Agreement on: January 22, 1998.

Statement of Answer filed by Respondent on: April 29, 1998.

Amended Statement of Answer filed on: December 22, 1998.

Steven P. Vincent executed the Uniform Submission Agreement on behalf of Respondent on: April 24, 1998.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, wage law violations including failure to pay commissions and bonuses earned and failure to make available stocks at a discount price, promissory estoppel, implied breach of promise and breach of fiduciary duty and joint venture agreement.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and maintained that Claimant failed to state a claim upon which relief

may be granted. Respondent maintained that Claimant's claim is barred by all applicable Statutes of Limitations. Respondent maintained that NASD lacked jurisdiction over Claimant's claim as it involved events and occurrences that transpired more than six years prior to the filing of the claim. Respondent maintained that Claimant's claim is barred by the Statute of Frauds to the extent applicable. Respondent maintained that Claimant expressly approved, authorized, participated in and ratified the complained of conduct, by continuing to accept compensation terms at Respondent for over seven years without complaining or otherwise asserting his rights under the alleged contract. Respondent further maintained that Claimant waived any right to later come forward and assert a claim. Respondent maintained that Claimant failed to mitigate his damages upon discovery of the alleged breach. Respondent maintained that Claimant failed to satisfy the substantive provisions of the New York Labor Law Sec. 190.

RELIEF REQUESTED

Claimant requested at the hearing damages in an amount not less than \$5 million for unpaid future commissions, unpaid bonuses and Irish deal damages which are summarized in the attached Exhibit which was introduced as Claimant's Exhibit 153 at the hearing.

Respondent requested that the Statement of Claim be dismissed, and that Respondent be awarded its costs and expenses in defending this action.

OTHER ISSUES CONSIDERED AND 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.

AWARD

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

1. That Claimant's first, second, third, fourth and fifth causes of action are denied in their entirety.
2. That Claimant is awarded \$100,000 as other and further relief the panel deems just and appropriate after taking into account the totality of the circumstances.
3. That parties shall bear their respective costs; except as Fees are specifically addressed below.
4. That any and all claims for relief not specifically addressed herein are denied in their entirety.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 500

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the event giving rise to the dispute. In this matter, the member firm is the Respondent.

Member surcharge = \$1,200

Pre-hearing process fee = \$ 600

Hearing process fee = \$2,000

Adjournment Fees

Adjournments requested during these proceedings:

The hearing dates of December 14 through December 16, 1998 and January 6 through January 8, 1999 were postponed at the request of Respondent for a cost of = \$600.

The hearing dates of April 20 through 22, 1999 were postponed at the request of the Claimant for a cost of = \$600.

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

3 Pre-hearing sessions with a single arbitrator x \$300 = \$900

Pre-hearing conference: November 5, 1998 1 session
March 26, 1999 1 session
November 23, 1999 1 session

2 Pre-hearing session with Panel x \$600 = \$1,200

Pre-hearing conference: August 6, 1998 1 session
January 20, 1999 1 session

23 Hearing sessions x \$1,500 = \$34,500

Hearing Dates: December 7, 1999 2 sessions
December 8, 1999 2 sessions
December 9, 1999 2 sessions
December 10, 1999 2 sessions
December 14, 1999 2 sessions

December 15, 1999	2 sessions
February 17, 2000	2 sessions
February 18, 2000	2 sessions
April 25, 2000	2 sessions
April 26, 2000	2 sessions
<u>April 28, 2000</u>	<u>3 sessions</u>

Total Forum Fees = \$34,500

The Panel assessed forum fees in the amount of \$36,600 against Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Claimant assessed for tapes	= \$ 45.
Respondent assessed for tapes	= \$270.

Fee Summary

Claimant is assessed the following fees:

Initial Filing Fee	= \$ 500
Adjournment Fee	= \$ 600
Administrative Costs	= <u>\$ 45</u>
Total Fees	= \$ 1,145
Less payments	= <u>\$1,100</u>
Balance Due NASD Regulation, Inc.	= \$ 45

Respondent be and hereby is solely liable for:

Member Fees	= \$ 3,800
Adjournment Fee	= \$ 600
Forum Fees	= \$36,600
Administrative Costs	= <u>\$ 270</u>
Total Fees	= \$41,270
Less payments	= <u>\$4,520</u>
Balance Due NASD Regulation, Inc.	= \$36,750

All balances are due and payable to NASD Regulation, Inc.

Summary of Schedules

SCHEDULE 1a: Claimant's Salary Plus Earned but Unpaid Futures Commissions 1988 - 1995	\$	3,525,143.92
SCHEDULE 1b: Claimant's Salary Plus Earned but Unpaid Futures Commissions 1992 - 1995	\$	2,506,550.18
SCHEDULE 1c: Claimant's Salary Plus Earned but Unpaid Futures Commissions 1988 - 1995 with Incremental RSU Calculation based on Salary and Commissions only for 1994	\$	3,694,934.58
SCHEDULE 1d: Claimant's Salary Plus Earned but Unpaid Futures Commissions 1992 - 1995 with Incremental RSU Calculation based on Salary and Commissions only for 1994	\$	2,676,340.84
SCHEDULE 1e: Claimant's Salary Plus Earned but Unpaid Futures Commissions 1988 - 1995 with Incremental RSU Calculation based on Salary and Commissions only for 1994 and 1995	\$	6,309,450.26
SCHEDULE 1f: Claimant's Salary Plus Earned but Unpaid Futures Commissions 1992 - 1995 with Incremental RSU Calculation based on Salary and Commissions only for 1994 and 1995	\$	5,290,856.52
SCHEDULE 1g: Claimant's Salary Plus Earned but Unpaid Futures Commissions 1988 - 1995 with Incremental RSU Calculation based on Salary, Commissions and Bonus for 1994 for Senior Salesmen (W2 compensation less salary).	\$	6,932,587.57
SCHEDULE 1h: Claimant's Salary Plus Earned but Unpaid Futures Commissions 1992 - 1995 with Incremental RSU Calculation based on Salary, Commissions and Bonuses for 1994 for Senior Salesmen (W2 compensation less salary)	\$	5,913,993.83
SCHEDULE 1i: Claimant's Salary Plus Earned but Unpaid Futures Commissions 1988 - 1995 with Incremental RSU Calculation based on Salary, Commissions and Bonus for 1994 and 1995 for Senior Salesmen (W2 compensation less salary)	\$	10,939,737.95
SCHEDULE 1j: Claimant's Salary Plus Earned but Unpaid Futures Commissions 1992 - 1995 with Incremental RSU Calculation based on Salary, Commissions and Bonuses for 1994 and 1995 for Senior Salesmen (W2 compensation less salary)	\$	9,921,144.21
SCHEDULE 2a: RSU Calculations for 1994 and 1995 (with 2.595% dividend) based on Salary & Commissions only	\$	2,784,306.35
SCHEDULE 2b: RSU Calculations for 1994 and 1995 (with 2.595% dividend) based on Salary, Commissions and Bonuses of Senior Salesmen (W2 compensation less salary)	\$	4,468,434.52
SCHEDULE 2c: Dividend Received by Kenneth D. Phillips		2.5949%
SCHEDULE 2d: Senior Salesmen compensation (W2 compensation less salary)	1993 \$	334,335.96
	1994 \$	895,703.21
SCHEDULE 3a: Schedule of Claimant's Damages From Irish Mortgage Securitization Transaction (Alternative Scenarios)		
	Scenario 1 \$	3,614,341.50
	Scenario 2 \$	573,343.00
	Scenario 3 \$	138,205.53
SCHEDULE 3b: Present Value Calculation for Irish Mortgage Securitization Transaction "Swap Fees"		
	Scenario 1 \$	26,159,350.00
	Scenario 2 \$	4,149,657.75
	Scenario 3 \$	1,500,425.54

Concurring Arbitrators' Signatures



Richard S. Peskin, Esq.
Non-Public Arbitrator, Chairperson

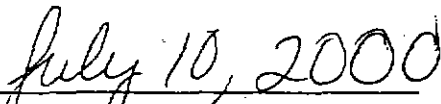
Date Signed

Susan Buckley
Non-Public Arbitrator, Panelist

Date Signed

Farrell C. Glasser, Esq.
Non-Public Arbitrator, Panelist

Date Signed

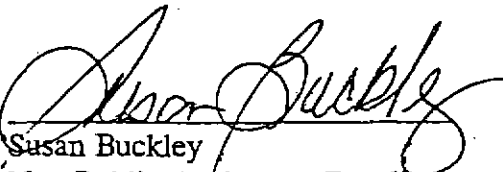


Date Award Served by the NASD Regulation, Inc.

Concurring Arbitrators' Signatures

Richard S. Peskin, Esq.
Non-Public Arbitrator, Chairperson

Date Signed



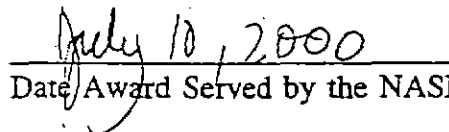
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Non-Public Arbitrator, Panelist



Date Signed

Farrell C. Glasser, Esq.
Non-Public Arbitrator, Panelist

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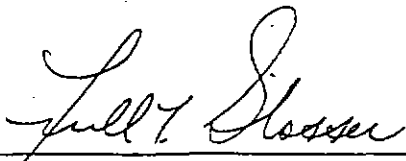
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Non-Public Arbitrator, Chairperson

Date Signed

Susan Buckley
Non-Public Arbitrator, Panelist

Date Signed


Farrell C. Glasser, Esq.
Non-Public Arbitrator, Panelist

6/29/00
Date Signed

July 10, 2000
Date Award Served by the NASD Regulation, Inc.