

**AWARD  
NASD REGULATION, INC.**

In the Matter of the Arbitration Between

Name of Claimant

Janney Montgomery Scott, Inc.

and

Case Number  
98-00417

Name of Respondent

James R. Bell

**REPRESENTATION OF PARTIES**

For Janney Montgomery Scott, Inc. ("**Claimant**") appeared Joseph J. Dougherty, Esq., of Joseph J. Dougherty & Associates, located in West Chester, Pennsylvania.

For James R. Bell ("**Respondent**") appeared Michael T. Farrell, Esq., of Post & Schell, P.C., located in Philadelphia, Pennsylvania.

**CASE INFORMATION**

Claimant filed the Statement of Claim on January 30, 1998.

Claimant signed the Uniform Submission Agreement on January 14 1998.

Claimant filed the Statement of Answer to the Counterclaim on May 4, 1998.

Respondent filed the Statement of Answer and Counterclaim on March 27, 1998.

Respondent signed the Uniform Submission Agreement on March 26, 1998.

**HEARING INFORMATION**

Pre-Hearing Conference:	September 15, 1998	One Session
	October 16, 1998	One Session

Hearing Date:	December 17, 1998	Two Sessions
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The hearings were held at NASD Regulation, District 9 office, located in Philadelphia, Pennsylvania.

### CASE SUMMARY

Claimant alleged that Respondent failed to repay Claimant \$35,000.00 plus interest at 4% per annum pursuant to a promissory note signed by Claimant. Specifically, Claimant alleged that Respondent signed an Agreement and Promissory Note that provided that Claimant would pay Respondent a bonus in the amount of \$140,000.00. If Respondent was employed with Claimant on May 11, of each year through 1998, Claimant would forgive \$35,000.00 per year of the \$140,000.00. Claimant alleged that Respondent stopped working on September 20, 1996. Claimant alleged that Respondent was terminated on May 27, 1997. On the date of termination, Claimant alleged that Respondent continued to owe Claimant \$35,000.00 plus interest at the rate of 4%.

According to Respondent's Answer and Counterclaim, Respondent denied the allegations of wrongdoing set forth in the Statement of Claim. Respondent admitted that Claimant did not receive payment. However, Respondent maintained that there was no outstanding obligation owed Claimant. Specifically, Respondent maintained that Claimant wrongfully terminated the employment contract, that Respondent informed Claimant that the agreement had been wrongfully terminated and that there was no duty to pay the sum demanded.

Respondent set forth the following affirmative defenses: 1) that under the principal of equity and inordinate profits earned by Claimant any debt which existed had been discharged; 2) Claimant waived all claims asserted in the Statement of Claim; 3) Claimant's claims are barred by the doctrine of laches; and 4) that the contractual provisions asserted by Claimant are unenforceable as a matter of law.

Pursuant to Respondent's Counterclaim, Respondent alleged that Claimant made statements and took actions, prior to September 20, 1996, that indicated to Respondent that an employment agreement had been entered into and that the employment relationship would continue to exist. Specifically, Respondent alleged that Claimant agreed that Respondent's license would remain with Claimant; that Respondent's clients and accounts would continue to be serviced by Claimant; and that Respondent would continue his efforts to produce revenue for Claimant.

Claimant denied the allegations set forth in the Counterclaim. Claimant maintained that no employment contract existed between Claimant and Respondent. Specifically, Claimant maintained that Respondent was an employee at will during the September 20, 1996 through May 27, 1997 time period.

**RELIEF REQUESTED**

Claimant requested:

1. Compensatory damages in the amount of \$35,000.00, plus interest in the amount of \$1,400.00.
2. Cost in the amount of \$1,300.00.
3. Dismissal of the Counterclaim in its entirety.

Respondent requested:

1. That the Statement of Claim be dismissed in its entirety.
2. Compensatory damages in the amount of \$200,000.00.

**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. Office of Dispute Resolution.

Respondent made a motion to dismiss. The panel denied the motion.

**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. Respondent shall pay to Claimant compensatory damages in the amount of \$35,000.00. No interest is awarded.
2. Claimant's request for cost in the amount of \$1,300.00 is denied.
3. Respondent's request for compensatory damages in the amount of \$200,000.00 is denied.
4. Any and all other requests for relief are denied.

**OTHER COST**

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure Claimant was assessed a member surcharge in the amount of \$800.00 which has been paid.

**FORUM FEES**

Pursuant to Rule 10332 of the Code, the arbitrators have determined that the NASD will retain the \$500.00 filing fee deposited by the Claimant.

The arbitrators have assessed the following forum fees:

1 Pre-Hearing Conference	x	\$300.00	=	\$ 300.00
1 Pre-Hearing Conference	x	\$600.00	=	\$ 600.00
2 Hearing Sessions	x	\$600.00	=	<u>\$1,200.00</u>
Total Forum Fees				\$2,100.00

Claimant has been assessed \$1,050.00 representing one half of the forum fees assessed. Claimant previously deposited \$600.00 with NASD Regulation, Inc., therefore, Claimant shall pay to NASD Regulation, Inc., \$450.00 in satisfaction of forum fees.

Respondent has been assessed \$1,050.00 representing one half of the forum fees assessed. Therefore, Respondent shall pay to NASD Regulation, Inc., \$1,050.00 in satisfaction of outstanding forum fees.

**Fees are payable to NASD Regulation, Inc.**

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Arbitration No. 98-00417  
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**ARBITRATION PANEL**

Fred S. Pieroni - Public Chairperson  
Brian A. Carlis - Public Panelist  
Robert J. Hall - Industry Panelist

**ARBITRATOR'S SIGNATURE**

*Fred S. Pieroni*

Fred S. Pieroni  
Public Chairperson

Date Decision Served by NASD Regulation, Inc.:

*January 28, 1999*

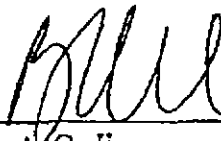
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Award Page 6 of 7

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Robert J. Hall - Industry Panelist

ARBITRATOR'S SIGNATURE



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Brian A. Carlis  
Public Panelist

Date Decision Served by NASD Regulation, Inc.:

January 26, 1999

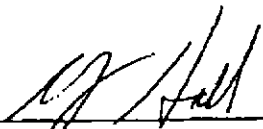
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Industry Panelist

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