

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Barry Maletsky and Eugene Beigelman

and

98-00465

Name of Respondent

W.J. Nolan & Company, Inc.

REPRESENTATION OF PARTIES

Barry Maletsky and Eugene Beigelman ("Claimants") were represented by Steven J. Rotunno, Esq., Kubasiak, Cremieux, Fylstra, Reizen & Rotunno, P.C., Chicago, Illinois.

W.J. Nolan & Company, Inc. ("Respondent") was represented by John D. Singer, Esq., Proskauer Rose, LLP, New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about February 6, 1998. Submission Agreement of Claimant Barry Maletsky was signed on February 24, 1998. Submission Agreement of Claimant Eugene Beigelman was signed on February 25, 1998.

Statement of Answer was filed by Respondent W.J. Nolan & Company, Inc. on or about May 27, 1998. Submission Agreement of Respondent W.J. Nolan & Company, Inc. was signed on May 29, 1998 by William J. Nolan.

HEARING INFORMATION

A telephonic hearing session was held on September 9, 1998 for one (1) session. The hearing was held on December 8, 1998 for three (3) sessions and December 9, 1998 for three (3) sessions in Chicago, Illinois for a total of seven (7) sessions.

CASE SUMMARY

Claimants, Barry Maletsky and Eugene Beigelman, alleged that they were employed by respondent in 1997. Claimants further alleged that on November 28, 1997, Respondent terminated them and on December 10, 1997, filed knowingly false Form U-5s with the NASD asserting that Claimants

had the responsibilities of a "branch office manager" and that they were terminated because they allegedly failed to exercise "on-site supervision." In addition, Claimant alleged that with regard to Claimant Beigelman, Respondent falsely stated on the Form U-5 that there was a customer complaint alleging unauthorized trading against him when in fact he was not the customer's registered representative for the trades in question. It was alleged that as a result of the false Form U-5s, Claimant Maletsky has not been able to find employment and Claimant Beigelman, although employed, cannot advance his career at better brokerage firms.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimant represented themselves to be branch managers of their respective offices and the home office, the registered representatives affiliated with those offices, and customers all similarly looked to Claimants as on-site managers. It was stated that Claimants willfully abrogated their responsibilities, and in accordance with NASD rules and regulations, Respondent terminated them and faithfully executed its regulatory responsibilities by accurately stating the reasons for the terminations on the Forms U-5.

RELIEF REQUESTED

Claimants requested that the arbitrators direct the expungement of the Forms U-5 from the records of the NASD, direct Respondent to file truthful Form U-5s, and for an award of damages in the amount of \$125,000.00 for each Claimant.

Respondents requested that the claims asserted against them be denied in its entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent W.J. Nolan & Company, Inc. did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10201 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and offered testimony at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution (the "NASD").

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. The undersigned arbitrators hereby order the expungement of the previously filed Form U-5 from the Central Registration Depository ("CRD") of the National Association of Securities Dealers, Inc. for the record of Barry Maletsky (CRD number 719482).
2. The undersigned arbitrators hereby order the expungement of the language stating the reasons for termination on the previously filed Form U-5 from the Central Registration Depository ("CRD") of the National Association of Securities Dealers, Inc. for the record of Eugene Beigelman (CRD number 2636873).
3. Respondent W.J. Nolan & Company, Inc. is ordered to file a corrected Form U-5 with the NASD stating that the reason for the terminations of Claimants Barry Maletsky and Eugene Beigelman was the closing of the office.
4. Respondent W.J. Nolan & Company, Inc. shall be and hereby is liable for and shall pay to Claimant Barry Maletsky the sum of \$25,000.00 (Twenty Five Thousand Dollars).
5. No damages are awarded to Claimant Eugene Beigelman.
6. Each party shall bear its own costs, expenses and fees, including but not limited to attorneys' fees, incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$600.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were seven (7) sessions x \$600.00 = \$4,200.00 in forum fees. Pursuant to Rule §10205(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule §10205(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$500.00 and shall refund the hearing session deposit in the amount of \$600.00 previously deposited with the NASD by the Claimants Barry Maletsky and Eugene Beigelman. Respondent W.J. Nolan & Company, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$4,200.00 as forum fees.

Pursuant to Rule 10333 of the Code, Respondent W.J. Nolan & Company, Inc. has paid to the NASD the member surcharge in the amount of \$1,000.00 previously invoiced. Pursuant to Rule 10333 of the Code, Respondent W.J. Nolan & Company, Inc. has paid to the NASD the process fees in the total amount of \$600.00 previously invoiced. Pursuant to Rule 10333 of the Code, Respondent W.J. Nolan & Company, Inc. shall pay to the NASD the past due hearing process fee in the amount of \$750.00 previously invoiced.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

John W. Jerak, Esq.
Public Arbitrator, Presiding Chair

James P. Fitzgerald
Industry Arbitrator

1/15/99

Concurring in all aspects of this Award except for paragraph 2 (two) above. The undersigned arbitrator would have the entire U-5 for Mr. Beigelman expunged and not just the reason for termination section.

Robert F. Brunn, Esq.
Public Arbitrator

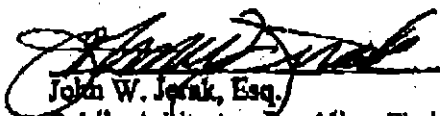
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Pursuant to Rule 10333 of the Code, Respondent W.J. Nolan & Company, Inc. has paid to the NASD the member surcharge in the amount of \$1,000.00 previously invoiced. Pursuant to Rule 10333 of the Code, Respondent W.J. Nolan & Company, Inc. has paid to the NASD the process fees in the total amount of \$600.00 previously invoiced. Pursuant to Rule 10333 of the Code, Respondent W.J. Nolan & Company, Inc. shall pay to the NASD the past due hearing process fee in the amount of \$750.00 previously invoiced.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Dated:


John W. Jerak, Esq.
Public Arbitrator, Presiding Chair

1-13-99

James P. Fitzgerald
Industry Arbitrator

Concurring in all aspects of this Award except for paragraph 2 (two) above. The undersigned arbitrator would have the entire U-5 for Mr. Beigelman expunged and not just the reason for termination section.


Robert F. Brunn, Esq.
Public Arbitrator

1/12/99