

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Alexander Centro  
International Brokers, Inc.

98-00479

Name of Respondents

Murphy & Durieu  
Richard J. Murphy  
Thomas McKee  
Richard Ricciardi

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**REPRESENTATION**

For Claimant Alexander Centro and International Brokers, Inc. ("Claimants") appeared Jacob H. Zamansky, Esq. a sole practitioner with offices located in New York, New York.

For Respondents Murphy & Durieu, Richard J. Murphy ("Murphy"), Thomas McKee ("McKee"), and Richard Ricciardi ("Ricciardi") (collectively "Respondents") appeared James E. Nealon, Esq. from the law offices Kelley, Drye & Warren, LLP, located in New York, New York.

**CASE INFORMATION**

Claimants' Statement of Claim was filed on February 5, 1998.  
Claimants' Amended Verified Statement of Claim was filed on May 21, 1998.  
Claimants' Reply to Respondent's Counterclaim was filed on June 30, 1998.  
Claimants' Submission Agreement was signed on February 5, 1998.

A Joint Statement of Answer was filed by Respondents on June 12, 1998.  
Murphy & Durieu's Submission Agreement was signed on June 10, 1998.  
Murphy's Submission Agreement was signed on June 10, 1998.  
McKee's Submission Agreement was signed on June 10, 1998.  
Ricciardi's Submission Agreement was signed on June 10, 1998.

**HEARING INFORMATION**

Pre-Hearing Conferences:	May 26, 1998	-	1 session
	July 14, 1998	-	1 session
	July 31, 1998	-	1 session
	September 8, 1998	-	1 session
	September 15, 1998	-	1 session
	September 23, 1998	-	1 session

Hearing Dates/Sessions:	April 9, 1998	-	1 session
	October 5, 1998	-	2 sessions
	October 6, 1998	-	2 sessions
	October 14, 1998	-	2 sessions
	October 15, 1998	-	2 sessions
	December 3, 1998	-	2 sessions
	January 12, 1999	-	1 session
	January 20, 1999	-	2 sessions
	January 25, 1999	-	2 sessions
	February 1, 1999	-	2 sessions
	February 2, 1999	-	2 sessions
	February 3, 1999	-	1 session
	February 9, 1999	-	2 sessions
	February 11, 1999	-	1 session

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

### CASE SUMMARY

Claimant alleged that he joined Murphy and Durieu in 1988 and founded a convertible bond desk ("Desk") from his existing customer base in reliance on an agreement with Murphy, general partner of Murphy & Durieu, that he would manage and independently operate his Desk at Murphy & Durieu. Claimant also alleged that under the agreement, Murphy & Durieu would receive 35% and he would receive 65% of commissions generated for clearing Domestic Desk transactions, and he was responsible for developing and maintaining Desk customers.

Claimant maintained that from 1988 to 1997, Desk revenues increased to \$9 million annually, the Desk customer base grew to comprise over 120 Direct Telephone Wires into major dealers and hedge funds, and the number of Desk brokers grew substantially. Claimant stated that he expanded the Desk in 1994 to broker convertible bonds internationally in the Asian markets in London and Japan, and, in three years, increased total Desk revenues by an additional \$3 million annually.

Claimant alleged that he hired respondents McKee and Ricciardi as brokers for the Desk and each was paid a high six-figure salary by him. Claimant further alleged that he gave Ricciardi co-management authority over the Desk, while he spent most of his time directly involved in the Desk's Asian business. Claimant alleged that, in December, 1997, Respondents seized upon a one-time loss in the tumultuous Asian markets as an excuse to oust him and convert and misappropriate the Desk for themselves. Claimant also alleged that McKee and Ricciardi conspired with Murphy to fire him and to defame and slander him in the industry.

Claimant stated that, on December 16, 1997, he was terminated in a humiliating and degrading fashion, and was escorted out of Murphy & Durieu by police. Claimant maintained that later that day and on ensuing days, McKee and Ricciardi slanderously described to customers the humiliating way that he was fired. Claimant maintained that, as a result, his reputation in the industry was destroyed.

Claimant alleged that, on January 8, 1998, Murphy and Durieu filed a U-5 with the NASD which published the false and defamatory statement that he was "terminated" for "violation of firm policy regarding position limits and unauthorized firing of trading desk employees" which he alleged was false because Murphy and Durieu had no written "firm policy regarding position limits," and he had always taken positions to facilitate brokerage as is customary in the industry. Claimant maintained that his positions in Asia were taken with the knowledge and consent of Murphy and Durieu, and he reduced his Asian positions when he was asked to do so by Murphy, as he had always done when asked to reduce positions. Claimant further claimed that, during his ten-year tenure, Murphy and Durieu never enforced position limits. Claimant alleged, in addition, that as manager of the Desk he had authority to hire and fire employees at all times which he did on numerous occasions over the years, and Murphy acknowledged in a sworn affidavit that he had such authority. Claimant maintained that his reputation and 32-year career were destroyed by the Respondents, and he was unable to obtain employment in the Industry due to the false and defamatory U-5.

Respondents denied all of Claimants' material allegations and asserted numerous affirmative defenses. Respondents also filed counterclaims which alleged breach of contract, breach of fiduciary duty, tortious interference, unfair competition and misuse and misappropriation of Murphy & Durieu's capital, trade secrets and proprietary business information (the "Counterclaims"). Respondents sought to recover approximately \$1 million in trading losses incurred as a result of Claimants allegedly violating position limits and "at risk" trading prohibitions set by Murphy & Durieu. Respondents also sought compensatory damages resulting from Claimants for allegedly conspiring with certain Murphy & Durieu employees after Claimant's termination to misappropriate trade secrets, computer programs and other proprietary business information. In addition to the foregoing, Respondents sought an award of punitive damages, attorneys' fees, costs and forum fees.

Claimants, in their Reply to Respondents' Counterclaim, denied wrongfully soliciting any clients or employees of Murphy and Durieu with whom he dealt with during his ten year tenure at Murphy & Durieu.

### **RELIEF REQUESTED**

Claimants requested:

1. An order expunging from the records of NASD's Central Registration Depository Murphy and Durieu's disclosure of the false reasons for his termination on his U-5.
2. Compensatory damages of \$11,410,234.00 which constitutes the net present value of his lost income and future earnings for conversion and misappropriation of his Desk.

3. Compensatory damages for the damage to his reputation as a result of Respondents' slander, libel, U-5 defamation and tortious interference with existing and prospective customer and employment relationships.
4. Their costs, reasonable attorneys' fees, and forum fees of this proceeding.
5. Punitive damages in an amount sufficient to punish Respondents and to deter them from engaging in similar conduct in the future.
6. Dismissal of all counterclaims.

Respondents requested that the panel deny Claimants' requests for relief in their entirety, and enter an award of compensatory and punitive damages in their favor, including reasonable attorneys' fees, interest and costs, along with such other, further and different relief as the panel deemed just, equitable, and proper.

#### **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 originals remain on file with NASD Regulation, Inc.

#### **AWARD**

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

1. Murphy & Durieu be and hereby is liable for and shall pay to Claimant the sum of ONE HUNDRED EIGHTY NINE THOUSAND DOLLARS (\$189,000.00).
2. The arbitrators hereby order that the form U-5 dated January 8, 1998 should be amended to reflect "permitted to resign" with no further explanation.
3. All claims against Murphy, McKee, and Ricciardi are hereby denied in their entirety.
4. Respondents' counterclaims are hereby denied in their entirety.
5. Each party shall bear their own costs, including attorneys' fees.
6. All other requests are hereby denied in their entirety.

#### **OTHER COSTS**

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure ("Code"), Murphy &

Durieu has paid to NASD Regulation, Inc. the \$3,600.00 member surcharge previously invoiced, the \$600.00 pre-hearing processing fee previously invoiced, and the \$5,000.00 hearing processing fee previously invoiced.

### FORUM FEES

Pursuant to Rule 10205(c) of the Code, the arbitrators have determined that NASD Regulation, Inc. will retain the \$500.00 non-refundable filing fee paid by Claimant and the \$500.00 counterclaim filing fee paid by Murphy and Durieu and have assessed the following forum fees:

6 pre-hearing Conferences	x	\$ 300.00	=	\$ 1,800.00
1 Hearing Session (with one arbitrator)	x	\$ 300.00	=	\$ 300.00
23 Hearing Sessions (with full panel)	x	\$1,500.00	=	\$34,500.00

1. Claimants be and hereby are jointly and severally liable for the sum of \$18,300.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$1,500.00 with NASD Regulation, Inc. and, therefore, Claimants shall jointly and severally remit the balance of \$16,800.00 to NASD Regulation, Inc.
2. Respondents be and hereby are jointly and severally liable for the sum of \$18,300.00, representing one-half of the total amount of forum fees assessed. Murphy and Durieu previously deposited \$1,500.00 with NASD Regulation, Inc. and, therefore Respondents shall jointly and severally remit the balance of \$16,800.00 to NASD Regulation, Inc.

ARBITRATION PANEL

Robert D. Herschman, Esq.	-	Public Chairperson
Neil J. Carey	-	Public Arbitrator
Barbara J. Glenns, Esq.	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE

*Robert D. Herschman*

Robert D. Herschman, Esq.  
Chairperson - Public Arbitrator

Date of decision: April 9, 1999

I, Robert D. Herschman, 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.


*Robert D. Herschman*

Robert D. Herschman, Esq.

**ARBITRATION PANEL**

Robert D. Herschman, Esq.	-	Public Chairperson
Neil J. Carey	-	Public Arbitrator
Barbara J. Glenns, Esq.	-	Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**



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Neil J. Carey  
Public Arbitrator

Date of decision: April 9, 1999

I, Neil J. Carey, 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.

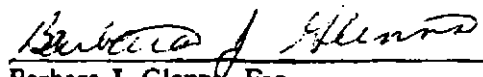


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Neil J. Carey

**ARBITRATION PANEL**


Robert D. Herschman, Esq.	-	Public Chairperson
Neil J. Carey	-	Public Arbitrator
Barbara J. Glenns, Esq.	-	Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**

  
Barbara J. Glenns, Esq.  
Industry Arbitrator

Date of decision: April 9, 1999

I, Barbara J. Glenns, 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.

  
Barbara J. Glenns, Esq.