

AWARD

NASD REGULATION, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

James Frederick Easter

Arbitration  
No. 98-00482

Name of Respondent(s)

Gary Teran

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REPRESENTATION

For Claimant: P. Bruce Badger, Esq., Fabian & Clendenin, Salt Lake City, Utah

For Respondent: Samuel Y. Edgerton, III, Esq., Nash & Edgerton, Hermosa Beach, California

CASE INFORMATION

Statement of Claim filed: February 6, 1998

Claimant's Submission Agreement signed: February 5, 1998

Motion to Dismiss Counterclaim and Reply to Counterclaim filed: June 16, 1998

Memorandum in Opposition to Gary Teran's Motion to Dismiss filed: August 28, 1998

Memorandum in Response to Respondent Gary Teran's Reply to Claimant J. Frederick Easter's Motion to Dismiss Counterclaim filed: August 28, 1998

Statement of Answer and Counterclaim filed by Respondent: May 29, 1998

Respondent Gary Teran's Motion to Dismiss filed: August 7, 1998

Respondent Gary Teran's Reply to Claimant James Frederick Easter's Motion to Dismiss Counterclaim filed: August 7, 1998

Respondent Gary Teran's Reply to James Frederick Easter's Memorandum in Opposition to Respondent's Motion to Dismiss filed: September 4, 1998

Respondent Gary Teran did not file a Submission Agreement. However, Mr. Teran is subject to NASD Regulation, Inc. (NASD) jurisdiction in accordance with Rule 10201 of the NASD Code of Arbitration Procedure.

#### HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

July 8, 1998 (one session)

September 22, 1998 (one session)

#### CASE SUMMARY

Claimant James Frederick Easter alleged that on or about January 3, 1995, Respondent Gary Teran filed a Form U-5 Termination Statement concerning Easter with the NASD and alleged that said U-5 Form was false and defamatory and related to Easter's work in his profession as a securities representative. Claimant further alleged that on or about October 1, 1996, Respondent Teran filed a second Form U-5 Termination Statement concerning Easter with the NASD and alleged that said U-5 Form was false and defamatory and related to Easter's work in his profession as a securities representative. Claimant further alleged that by publishing the statements contained in the first and second U-5 Forms, Teran intended to convey to the public and to Easter's future employers that Easter was dishonest and could not be trusted and that he had made misrepresentations in order to obtain commissions he had not earned. Claimant further alleged that as a result of publication of the first and second U-5 Forms, Easter has been damaged by his inability to obtain desired employment and his inability to associate with a new broker/dealer. Claimant further alleged that he is entitled to an award of damages and punitive damages against Teran as a result of his malicious filing of the first and second U-5 Forms.

Respondent Teran alleged that on October 2, 1997 and October 3, 1997, this same case was tried before an NASD arbitration panel in Salt Lake City, Utah (NASD Case Number 96-05465) and alleged that Claimant's claims were already decided in the prior case. Respondent Teran further alleged that all of the statements reported in the January, 1995 and October, 1996 U-5 Forms were true statements concerning the resignation of Easter. Respondent Teran denied that Easter is entitled to any relief requested in his Statement of Claim, or that he has been damaged in the sum or sums alleged, or in any other sum or manner whatsoever as the result of the alleged acts, conduct or omissions of Teran. Respondent Teran also asserted affirmative defenses.

Respondent Teran alleged the following claims with respect to his Counterclaim: 1) Breach of Contract; 2) Breach of Contract and Misappropriation; 3) Fraud; 4) Constructive Fraud; 5) Negligent Misrepresentation; 6) Breach of Fiduciary Duty; and 7) Violation of the NASD Conduct Rules.

Claimant Easter denied any liability with respect to Teran's Counterclaim and asserted various defenses.

#### RELIEF REQUESTED

Claimant Easter requested general and special damages against Teran in the amount of \$413,200.00 plus punitive damages against Teran in the amount of \$800,000.00.

Respondent Teran requested:

1. That Claimant take nothing by way of his Statement of Claim;
2. That Teran be awarded its costs and reasonable attorneys fees; and
3. That Teran be afforded such other further relief as the arbitrators deem just and proper.

Respondent Teran requested the following relief with respect to his Counterclaim:

1. Damages in an amount to be proven at arbitration but in no event less than \$50,000.00;
2. Punitive damages not less than \$150,000.00;
3. Pre-award and post-award interest at the maximum legal rate;
4. All applicable costs; and
5. Such other and further relief as the arbitrators deem just and proper.

#### OTHER ISSUES CONSIDERED AND DECIDED

On or about May 27, 1998, the parties agreed to the appointment of the same arbitration panel in this case as was involved in NASD Case Number 96-05465, First Western Advisors v. James F. Easter.

### AWARD

1. This matter was heard via conference telephone connections September 22, 1998 by George John Potter and Langdon T. Owen, Jr., two of the three arbitrators assigned to this case. P. Bruce Badger, counsel for the Claimant, James Frederick Easter, and Samuel Y. Edgerton, III, counsel for the Respondent Gary Teran, appeared for their respective clients. Both parties waived the participation of the third arbitrator and consented to the hearing proceeding before the two arbitrators named above. The hearing was on Respondent's motion to dismiss the claim and on Claimant's motion to dismiss the counterclaims that had been brought. The parties argued the res judicata effect of the prior award by this very same arbitration panel in the prior matter of First Western Advisors, Claimant v. James F. Easter, Respondent and Counterclaim Claimant, v. First Western Advisors and Gary Teran as Counterclaim Respondents, Arbitration No. 96-05465. In that prior hearing the panel had found that Mr. Teran had not been properly served in the matter and thus issued an award on the counterclaim against First Western Advisors only. An award was also granted to First Western Advisors on its original claim. After hearing the arguments of counsel and after having reviewed the memoranda, claims, responses and other pleadings in this matter, the panel finds and awards that Gary Teran shall be jointly and severally liable with First Western Advisors with respect to the award on the counterclaim by James Frederick Easter in Arbitration No. 96-05465, and the counterclaims in this matter raised by Gary Teran shall be dismissed on the merits with prejudice, as barred by the res judicata effect of the prior award in Arbitration No. 96-05465.

2. The parties shall each bear their respective costs including attorney's fees.

### FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the following forum fees are assessed: Forum fees shall be split between the parties and are calculated as follows:

Two hearing sessions @ \$1,000.00/session	=	\$2,000.00
Total fees assessed	=	\$2,000.00
Claimant Easter's share (50%)	=	\$1,000.00
Credit for hearing deposit	=	\$1,000.00
Balance due	=	\$ 0.00
Respondent Teran's share (50%)	=	\$1,000.00
Credit for hearing deposit	=	\$ 750.00
Balance due	=	\$ 250.00

Fees are payable to NASD Regulation, Inc.

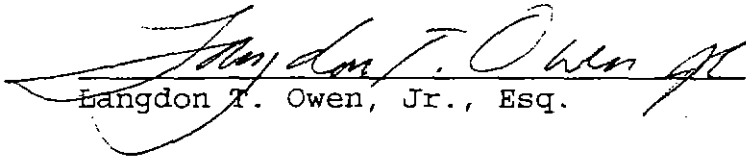
ARBITRATORS

Name ..... Public / Industry

Langdon T. Owen, Jr., Esq.  
B.N. Meldrum  
George John Potter

Public Arbitrator  
Public Arbitrator  
Industry Arbitrator

Concurring Arbitrators' Signatures

 10/15/98  
Langdon T. Owen, Jr., Esq.

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B.N. Meldrum

\_\_\_\_\_  
George John Potter

Date of Decision: \_\_\_\_\_

Date Served:

OCT 27 1998

ARBITRATORS

Name \_\_\_\_\_ Public / Industry

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B.N. Meldrum  
George John Potter

Public Arbitrator  
Public Arbitrator  
Industry Arbitrator

Concurring Arbitrators' Signatures

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Langdon T. Owen, Jr., Esq.

B. N. Meldrum  
B.N. Meldrum

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George John Potter

Date of Decision: 9-22-98

Date Served:

OCT 27 1998

Date Served:

OCT 27 1998

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Public Arbitrator

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Public Arbitrator

George John Potter

Industry Arbitrator

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B.N. Meldrum

George John Potter  
George John Potter

Date of Decision: 10/13/95

Date Served:

OCT 27 1998