

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Frank Beck, (Claimant) vs. The MONY Life Insurance Company and Brent Roper, (Respondents).

Case Number: 99-00177

Hearing Site: Houston, Texas

REPRESENTATION OF PARTIES

Claimant, Frank Beck, hereinafter referred to as "Claimant": Brian Tuner, Esq., Austin, Texas.

Respondents, The MONY Life Insurance Company ("MONY") and Brent Roper ("Roper"), hereinafter collectively referred to as "Respondents": Jack L. Johnson, Esq. and Douglas Hamel, Esq., Vinson & Elkins, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: January 13, 1999

First Amended Statement of Claim filed on or about: September 27, 1999

Claimant signed the Uniform Submission Agreement: December 11, 1998

Statement of Answer filed by Respondents on or about: March 10, 1999

Respondent, MONY, signed the Uniform Submission Agreement: February 17, 1999

Respondent, Roper, signed the Uniform Submission Agreement: February 18, 1999

CASE SUMMARY

Claimant asserted the following causes of action: tortuous interference with prospective business relations; libel and slander; malicious prosecution; intentional infliction of emotional distress; and spoliation of evidence. The causes of action related to the termination of Claimant from MONY in August of 1997.

Respondents' submitted the following case summary:

Respondents, MONY Life Insurance Company ("MONY")¹ and Brent Roper, submit the following summary of the claims and defenses in this case.

This is a defamation action brought by Frank Beck against MONY, where he worked as a sales manager and career agent, and Brent Roper, his former manager at MONY. Mr. Beck claims that MONY and Mr. Roper defamed him by submitting maliciously false information to the NASD in connection with his termination as a registered representative. Mr. Beck bases his claim on statements made by MONY on the NASD Form U-5, a document which MONY is required to submit, completely and accurately, whenever a registered representative is terminated. Specifically, Mr. Beck complains about the comment made on the U-5 that he was using a "non-registered individual to solicit" the sale of a securities-based product.

As the evidence will show, the information submitted to the NASD was true and, in any event, legally privileged. In August 1997, Mr. Roper learned from a new agent, Lynn Simmons, and from Mr. Beck's assistant that Mr. Beck was improperly using a non-registered person, Jerry McIlhon, to solicit securities-based applications that were to be submitted in Mr. Simmons' name. Mr. Roper was appalled to hear this information, especially since he had had a similar problem with Frank Beck several months earlier. Mr. Roper made an appointment with Mr. Beck the following week to discuss the matter with him. In the meantime, while Mr. Roper was out of town, Mr. Beck, aware that his employment was in jeopardy, finalized his plans to leave the Austin agency and aggressively escalated his efforts to recruit away high-producing MONY agents. When Mr. Roper returned, he decided for several reasons, including Mr. Beck's improper sales practices and recruitment of MONY agents, to terminate Mr. Beck's employment as a sales manager and to terminate his agency contract "for cause." Before and after the decision to terminate, he had conversations with Ed Hill, the Chief Compliance Officer, to inform him of the Jerry McIlhon situation. On the basis of the information relayed by Mr. Roper, Mr. Hill completed a draft of the Form U-5. The form disclosed, as MONY was required to do, Mr. Beck's sales-related misconduct. It did not disclose the other bases for Mr. Beck's termination, as the other grounds were not securities-related and not relevant to the NASD. This information was supplied to the NASD only.

Even if Mr. Beck could somehow prove that he did not in fact use a non-registered agent to solicit securities-based products and even if he could prove the statements to the NASD caused him any damage, his claim would still fail because the communications were privileged. Furthermore, even assuming this privilege is qualified rather than absolute, Mr. Beck bears the burden of proving not only the statements to the NASD were in fact false but also that such false information was submitted maliciously, i.e., with Mr. Roper's knowledge that the information was false or with reckless disregard for its falsity. Mr. Roper had no

¹ The term "MONY" will be used generically to refer to all the MONY entities, including MONY Securities Corp., the technical NASD member.

reason to question any of the information that he was given, and then relayed, about Mr. Beck's sales practices. In fact, the information was fully consistent with Mr. Beck's reputation and prior practices. Although Claimant has made much of the fact that he was later offered a noncompetition agreement in exchange for a withdrawal of the termination "for cause," there is no evidence that those negotiations had any impact whatsoever on the preparation or ultimate submission of the U-5. Indeed, the agreement itself stated that nothing in it would prevent MONY from responding to official inquiries about Mr. Beck's employment. More importantly, even if there were evidence (which there is not) that Mr. Roper had some bad motive in relaying the McIlhon information to Mr. Hill, such is no evidence of malice, which has nothing to do with bad motives or ill will but, rather, with knowledge or reckless disregard for the falsity of the information submitted.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	unspecified
Punitive Damages	unspecified
Interest	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	unspecified

Respondents requested:

Claimant take nothing	
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	unspecified

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 27, 1999, Claimant filed a Motion For Leave to File an Amended Statement of Claim. The Panel granted the Motion on December 6, 1999.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel orders The MONY Life Insurance Company to amend Frank Beck's Form U-5 and expunge the derogatory response concerning improper sales practices;
2. The Claimant's request for actual and exemplary damages as well as interest and other relief is denied in its entirety; and
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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
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Member Fees

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

Member surcharge	= \$1,200
Pre-hearing process fee	= \$600
Hearing process fee	= \$2,000

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$600	= \$600
Pre-hearing conference: September 9, 1999	1 session
Five (5) Hearing sessions x \$600	= \$3,000
Hearing Dates: December 13, 1999	2 sessions
December 14, 1999	2 sessions
December 15, 1999	1 session
Total Forum Fees	= \$3,600

1. The Panel has assessed \$3,600 of the forum fees to The MONY Life Insurance Company.

Fee Summary

1. Claimant, Frank Beck, be and hereby is solely liable for:

Initial Filing Fee = \$500

Total Fees = \$500

Less payments = \$1,100

Refund = \$600

2. Respondent The MONY Life Insurance Company, be and hereby is solely liable for:

Forum Fees = \$3,600

Balance Due NASD Regulation, Inc. = \$3,600

3. MONY Securities Corporation, be and hereby is solely liable for:

Member Fees = \$3,800

Balance Due NASD Regulation, Inc.

= NATIONAL ASSOCIATION
OF SECURITIES DEALERS, INC.

All balances are due to NASD Regulation, Inc.

RECEIVED
JAN 11 2000

Concurring Arbitrators' Signatures



Dennis H. Taylor, Esq.
Public Arbitrator, Presiding Chair

Signature Date

A. Ross Rommel, Jr., Esq.
Public Arbitrator

Signature Date

Dale A. Hearn
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Regulation, Inc., Office of Dispute Resolution
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Less payments	= \$1,100
Refund	= \$600

2. Respondent The MONY Life Insurance Company, be and hereby is solely liable for:

Forum Fees	= \$3,600
Balance Due NASD Regulation, Inc.	= \$3,600

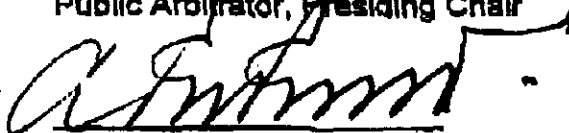
3. MONY Securities Corporation, be and hereby is solely liable for:

Member Fees	= \$3,800
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Balance Due NASD Regulation, Inc.	= \$3,800

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

Dennis H. Taylor, Esq.
Public Arbitrator, Presiding Chair



A. Ross Rommel, Jr., Esq.
Public Arbitrator

Signature Date

1/5/00

Signature Date

Dale A. Hearn
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

Post-it® Fax Note	7671	Date	1-4-00	# of pages	2
To	MARI TONYAN	From	DALE HEARN		
Co./Dept.	NASD	Co.	SPT		
Phone #	312-877-4437	Phone #2	281-444-8732		
Fax #	312-236-9239	Fax #	281-444-8753		

Fee S

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Member Fees = \$3,800

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Public Arbitrator

Signature Date

Dale A. Hearn
Dale A. Hearn
Industry Arbitrator

1-4-00
Signature Date

Dec. 13, 1915 - 1285
Date of Service (For NASD office use only)