

**AWARD**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Dan Calabria

and

99-02484  
Tampa, Florida

Name of Respondent

Franklin/Templeton Distributors, Inc.

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**REPRESENTATION OF PARTIES**

Dan Calabria ("**Claimant**") was represented by Allan J. Fedor, Esq. and Franell Fedor, Esq., Fedor & Fedor, Largo, Florida.

Franklin/Templeton Distributors, Inc. ("**Respondent**") was represented by Francis M. Curran, Esq., Holland & Knight LLP, Tampa, Florida and M. Kirby C. Wilcox, Esq. and Shannon S. Fallick, Esq., Paul Hastings Janofsky & Walker LLP, San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 28, 1999. Amended Statement was filed on or about November 15, 1999. Submission Agreement of Claimant Dan Calabria was signed on May 27, 1999.

Statement of Answer was filed by Respondent Franklin/Templeton Distributors, Inc. on or about December 8, 1999. Submission Agreement of Respondent Franklin/Templeton Distributors, Inc. was signed on August 18, 2000.

**CASE SUMMARY**

Claimant submitted the following summary:

Dan Calabria's claim arises out of his severance of employment with Templeton Funds Management, Inc. ["TFM"], Franklin Resources and related entities. It relates to the Severance Agreement between Dan Calabria and Franklin Resources, Inc. (fka Templeton Funds Management, Inc.) dated as of June 2, 1993. The facts giving rise to the claim were a result of the merger between the businesses of Templeton, Galbraith & Hansberger, Inc.

["TGH"] and Franklin Resources, Inc. Mr. Calabria was the President of Templeton Funds Management, Inc. and had business responsibilities with various TGH and TFM-affiliated organizations. Mr. Calabria alleged that he was a key employee and a senior executive of the Templeton, Galbraith & Hansberger Ltd. businesses and was entitled to the same benefits and employment contract status as other key employees and senior executives who were caught up in the merger. He alleged that the obligation to listed employees was fixed and incurred as of the date of the merger between Franklin Resources and TGH businesses which was before Mr. Calabria was terminated. Having been improperly severed without knowing the full benefits that he was entitled, Mr. Calabria alleged that he remained in the dark about his losses.

Mr. Calabria alleged that the Severance Agreement was procured through active misrepresentation and concealment of his employee rights and benefits including, in particular, his rights under the Franklin Resources, Inc. Amended and Restated 1988 Restricted Stock Plan as then in effect. The Severance Agreement actually resulted in a payment to Mr. Calabria. However, he was due an additional amount which was never paid to him. Mr. Calabria alleged that the proposed offer was misrepresented to him and that he was defrauded and misled, either intentionally or unintentionally, or by the neglect of Respondent's agents and representatives. Alternatively, Mr. Calabria alleged that there was a complete failure of consideration because he was tricked into signing a release which was paid for with money to which he was already entitled. Under pressure and duress, Mr. Calabria alleged that he signed the Severance Agreement effective as of June 2, 1993. In his amended statement of claim, Mr. Calabria alleged that he was fraudulently induced into entering into the Severance Agreement and that such fraudulent inducement amounted to civil theft, theft by false pretenses and wrongful conversion and appropriation of property in violation of F.S. §§ 772.11 and 812.014(1)(a)&(b).

Respondent submitted the following summary:

Respondent denied all allegations in the statement of claim and amended statement of claim, and asserted the following defenses: Claimant failed to state claim upon which relief may be granted; Claimant's claims are barred by the statute of limitations; Claimant's claims are barred by a Severance Agreement and Release he executed in 1993; and the common law doctrines of ratification, accord and satisfaction, and waiver.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the nature of his right to convert his Templeton, Galbraith and Hansberger restricted stock into stock from the Franklin Resources, Inc. Amended and Restated 1998 Restricted Stock Plan, such conversion amounting to 44,538 shares of Franklin Resources, Inc. common stock as adjusted for the stock split and the stock dividend that occurred in January 1997 and in December 1997, respectively, compensatory damages of \$78,659.04 cash plus

legal interest from October 30, 1992. In addition, Claimant requested treble damages of an additional 133,614 shares of Franklin Resources, Inc. common stock and \$235,977.12 pursuant to F.S. §§ 772.11 and 812.012-812.014. At the time of the initial filing of this claim, the total dollar amount requested was estimated to be between \$1,000,000.00 and \$3,000,000.00.

Respondent requested that the matter be dismissed and that it be awarded the fees and costs it incurred in defending itself against the claim.

### **OTHER ISSUES CONSIDERED & DECIDED**

At the preliminary hearing held on July 13, 2000, the Arbitration Panel denied Respondent's Motion to Dismiss and Motion to Stay Discovery, granted Claimant's Motion to Compel Discovery dated May 30, 2000, granted Claimant's Motion to Compel Respondent to sign and file a Uniform Submission Agreement and ordered that the Uniform Submission Agreement be executed by August 21, 2000. The panel deferred acting on Claimant's Second Motion for Sanctions and Second Motion to Compel Discovery dated May 19, 2000.

On October 30, 2000 the Chairman denied Franklin's Motion to Compel further responses in Discovery and ruled that as to Claimant's Fourth and Fifth Motions to Compel: "The parties are directed to comply with the panel's July 13, 2000 decision which stated '... Respondent is hereby ordered to produce the documents and information requested in Claimant's First Request for the production of Documents and Information dated January 15, 2000.'" Claimant's Motion for Sanctions was deferred.

On February 27, 2001, the Chairman granted Claimant's Sixth Motion to Compel Discovery dated February 21, 2001.

On March 1, 2001, the Arbitration Panel denied Respondent's Motion for a Directed Verdict and Dismissal.

On March 1, 2001, after the presentation of evidence on the merits, the Arbitration Panel denied Claimant's Motion(s) for Sanctions and denied Respondent's Motion for Sanctions.

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 Dispute Resolution, Inc. (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. Respondent Franklin/Templeton Distributors, Inc. is found liable for and shall pay to the Claimant Daniel Calabria the sum of \$458,208.00 (**Four Hundred Fifty Eight Thousand Two Hundred Eight Dollars**) as monetary compensatory damages.
2. Interest at the legal rate in the State of Florida is awarded on the above stated sum from and inclusive of October 30, 1992 to and inclusive of the date this award is paid in full.
3. Respondent Franklin/Templeton Distributors, Inc. is found liable for and shall pay to the Claimant Daniel Calabria the sum of \$500.00 as reimbursement of filing fees previously paid to the NASD Dispute Resolution, Inc.
4. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
5. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$500.00

#### **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(s) is(are) Franklin/Templeton Distributors, Inc.

Member surcharge = \$2,500.00  
Pre-hearing process fee = \$ 600.00

Hearing process fee = \$4,500.00

**Forum Fees and Assessments**

The Arbitration 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:

Three (3) Pre-hearing session(s) with Panel x \$1,200.00 = \$3,600.00

Pre-hearing conference(s): February 9, 2000 1 session  
July 13, 2000 1 session  
November 2, 2000 1 session

Five (5) Hearing sessions x \$1,200.00 = \$6,000.00

Hearing Date(s): February 28, 2001 2 sessions  
March 1, 2001 3 sessions

Total Forum Fees = \$9,600.00

The Arbitration Panel has assessed \$0.00 of the forum fees to Dan Calabria.

The Arbitration Panel has assessed \$9,600.00 of the forum fees to Franklin/Templeton Distributors, Inc.

**Fee Summary**

Claimant, Dan Calabria, shall be and hereby is liable for:

|   |              |
|---|--------------|
| Initial Filing Fee                                      | = \$ 500.00  |
| <u>Forum Fees</u>                                       | = \$ 0.00    |
| Total Fees  | = \$ 500.00  |
| <u>Less payments</u>                                    | = \$2,000.00 |
| Balance to be refunded by NASD Dispute Resolution, Inc. | = \$1,500.00 |

Respondent, Franklin/Templeton Distributors, Inc., shall be and hereby is liable for:

|   |               |
|---|---------------|
| Member Fees                               | = \$ 7,600.00 |
| <u>Forum Fees</u>                         | = \$ 9,600.00 |
| Total Fees                                | = \$17,200.00 |
| <u>Less payments</u>                      | = \$ 7,600.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 9,600.00 |

**All balances are due to NASD Dispute Resolution, Inc.**

Dated:

**/s/ Robert K. MacKenzie**  
Robert K. MacKenzie  
Industry Arbitrator, Presiding Chair

**March 8, 2001**

**/s/ David C. Lockhart**  
David C. Lockhart  
Industry Arbitrator


**March 9, 2001**

**/s/ Mathew Mark Gillio**  
Matthew Mark Gillio  
Industry Arbitrator

**March 8, 2001**

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Arbitration No. 99-02484  
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All balances are due to NASD Dispute Resolution, Inc.

  
Robert K. MacKenzie  
Industry Arbitrator, Presiding Chair

Dated:

March 8 2001

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David C. Lockhart  
Industry Arbitrator

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Matthew mark Gillio  
Industry Arbitrator

NASD Dispute Resolution, Inc.  
Arbitration No. 99-02484  
Award Page 6 of 6

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Dated:

Robert K. MacKenzie  
Industry Arbitrator, Presiding Chair

  
David C. Kockhart  
Industry Arbitrator

Matthew mark Gillio  
Industry Arbitrator

March 9, 2001



NASD Dispute Resolution, Inc.  
Arbitration No. 99-02484  
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Dated:

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Industry Arbitrator, Presiding Chair

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David C. Lockhart  
Industry Arbitrator

  
Matthew mark Gillio  
Industry Arbitrator

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