

Award
NASD Regulation, Inc.

Not on any list 7.17.02

In the Matter of the Arbitration Between

Name of Claimant

Craig M. Porter

Case No. 99-02779

Names of Respondents

Marion Bass Securities Corporation
Marion Bass
Marion Bass Holdings

REPRESENTATION OF PARTIES

Craig M. Porter ("Porter"), hereinafter referred to as "Claimant", appeared pro se.

For Respondents Marion Bass Securities Corp. and Marion Bass, hereinafter referred to as "Respondents": John A. Jordak, Jr., Esq. of the law firm of Alston & Bird, LLP., Atlanta, Georgia.

Marion Bass Holdings did not appear.

CASE INFORMATION

Statement of Claim filed on or about: June 16, 1999.

Addendum to Statement of Claim filed on or about: July 25, 1999.

Letter dated July 9, 1999 from Craig Porter to NASD Regulation, Inc. filed.

Letter dated July 16, 1999 from Craig Porter to NASD Regulation, Inc. filed.

Letter dated July 19, 1999 from Craig Porter to NASD Regulation, Inc. filed.

Claimant signed the Uniform Submission Agreement on or about: July 10, 1999.

Statement of Answer filed by Respondents Marion Bass Securities Corp. and Marion Bass on or about: July 22, 1999.

Respondents Marion Bass, Marion Bass Holdings and Marion Bass Securities Corp. did not file executed Uniform Submission Agreements.

Respondent Marion Bass Holdings did not file a Statement of Answer.

CASE SUMMARY

Claimant asserted the following causes of action: racial discrimination; harassment; denial of benefits; and, malicious slandering with respect to his Form U-5. Claimant further alleged that by terminating his health insurance, without warning, Respondents Marion Bass, Marion

Bass Holdings and Marion Bass Securities Corp. subjected Claimant's family to risk. Claimant next alleged that Respondents Marion Bass, Marion Bass Holdings and Marion Bass Securities Corp. violated the rules of the National Association of Securities Dealers, Inc. and the Securities and Exchange Commission. In addition, Claimant alleged that Respondents Marion Bass, Marion Bass Holdings and Marion Bass Securities Corp. have failed to return his personal belongings to him.

Respondents Marion Bass Securities Corp. and Marion Bass denied that they are liable to Claimant for either equitable relief or damages and alleged the following: Claimant began work at Marion Bass Securities Corp. as a registered representative on January 23, 1998, and was terminated for cause on August 3, 1998. Claimant's health insurance benefits, which were continued after he left Marion Bass Securities Corp. under COBRA, were terminated as of April 1, 1999, based on Claimant's failure to pay his premiums in a timely manner, not as a result of any wrongful action by Respondents. Marion Bass Securities Corp. filed a Form U-5 with the NASD following the termination of Claimant's employment that stated that Claimant was terminated because of "lack of production and unable to supervise."

Respondents are not liable to Claimant based on the accurate statements contained in the Form U-5. Respondents have not violated any applicable NASD, SEC or other rule, regulation or law with regard to the trades made by Claimant during the time he was employed by Marion Bass Securities Corp. Claimant does not have standing to bring a claim against Respondents based on any alleged trading irregularities because he has suffered no damages arising out of them. Marion Bass Securities Corp. was justified in terminating Claimant's employment with Marion Bass Securities Corp. The termination was not based on racial harassment or discrimination. In addition, Marion Bass Securities Corp. is unaware of any of Claimant's personal belongings in Marion Bass Securities Corp.'s possession. Accordingly, Claimant has failed to show that a claim exists against Respondents.

Respondent Marion Bass Securities Corp. asserted a counterclaim as follows: Marion Bass Securities Corp. provided three loans totaling \$27,031.62 to Claimant in connection with Claimant's employment as a registered representative with Marion Bass Securities Corp. To memorialize the terms of the agreements, Marion Bass Securities Corp. and Claimant entered into and executed three separate "Loan Agreements." Although the terms of one of the Loan Agreements provides for partial or total forgiveness of the amount loaned if certain specified conditions were met, Claimant did not fully meet those requirements and qualifies only for forgiveness of a very limited amount of the principal. It is undisputed that Claimant received the loan proceeds for all three loans and has not made any efforts at repayment. Accordingly, Marion Bass Securities Corp. is entitled to an award in the amount of \$27,031.62 plus interest, costs and attorneys' fees.

RELIEF REQUESTED

In the Statement of Claim and Addendum to Statement of Claim, Claimant requested the following damages:

Lost income	\$250,000.00
Emotional Distress	\$150,000.00

Slander	\$150,000.00
Libel U-5	\$ 75,000.00
Personal Property	\$ 1,100.00
Additional Damages	\$100,000.00
Punitive Damages	\$550,000.00

In addition, Claimant requested the immediate reinstatement of his health insurance.

Respondents requested a dismissal of Claimant's claims. In addition, Respondent Marion Bass Securities Corp. requested damages on its counterclaim in the sum of \$27,031.62 plus interest, costs, attorneys' fees and other relief deemed appropriate by the arbitration panel.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Marion Bass Securities Corporation and Marion Bass did not file with the NASD Regulation, Inc. Office of Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure ("the Code") and having answered the claim are bound by the determination of the Panel on all issues submitted.

On or about January 12, 2000, Respondents Marion Bass Securities Corp. and Marion Bass filed with NASD Regulation, Inc. and served upon Claimant Respondents' Motion for Sanctions Against Claimant for Failure to Comply with the Panel's Order Compelling Discovery.

Claimant filed no response to the Motion for Sanctions, and the Panel was advised by NASD Regulation, Inc. personnel that, on two separate occasions, voicemail messages were left for Mr. Porter communicating to him that he could respond to the Motion for Sanctions, file his own Motion for Sanctions, or to Compel, if he thought it appropriate, or take such other action as he deemed appropriate under the Code.

Respondents served their First Request for Information and Documents to Claimant ("First Request for Production") on September 28, 1999, and Claimant had until October 28, 1999 to respond thereto. On November 12, 1999, Respondents served a Motion to Compel, asserting that Claimant had failed to provide any meaningful response or produce any documents as requested by Respondents' First Request for Production.

On December 10, 1999, this Panel issued a ruling in which it ordered the Claimant to provide meaningful responses to Respondents' four requests for information and to produce documents requested in Document Request Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, 15, 16, 17, 18, 19, 20, 23, 24, 25 and 26. Claimant's responses were to be provided to Respondents on or before December 31, 1999. Respondents assert that Claimant has produced not one document and has provided no additional information as directed by the December 10, 1999 Ruling. Claimant has not responded to Respondents' assertion.

A review of the record demonstrates that not only has Claimant failed to comply with this Panel's December 10, 1999 Ruling, but that Claimant failed to comply with other rulings concerning the production of documents and other tangible material.

Based upon the information available to this Panel, the Claimant has and is wilfully refusing to engage in any meaningful discovery and is wilfully refusing to comply with the rulings of both the Injunctive Relief Arbitrator and the Panel of Arbitrators. Consequently, the imposition of sanctions seems appropriate for Claimant's repeated wilful refusal to abide by rulings made in this proceeding. The subject of the exact nature of sanctions is troubling to the Panel. Respondents request the sanction of Dismissal With Prejudice. Claimant, having filed no response to Respondents' Motion, has neither justified his actions nor offered any alternative other than Dismissal With Prejudice. However, the Code at Rule 10305(b) requires that prior to dismissing a proceeding with prejudice for wilful and intentional material failure to comply with an order of the arbitrator, that lesser sanctions should have proven ineffective. The arbitrators believe, however, that no meaningful adherence to the Code either can or will be achieved in connection with this proceeding. Consequently, this proceeding is dismissed without prejudice to any claim or defense available to any party, and the parties are referred to their judicial remedies.

AWARD

After considering the pleadings and the complete record in this matter, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

All claims by all parties are dismissed, without prejudice, and the parties are referred to their judicial remedies.

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	= \$300.00
Claimant's injunctive relief surcharge, waived by the arbitration panel.	= \$2,500.00
Counterclaim filing fee	= \$1,000.00

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 is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$4,500.00
Hearing process fee	= \$600.00

Adjournment Fees

No Adjournments were requested during these proceedings.

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:

Four Pre-hearing sessions with a single arbitrator x \$450.00	= \$1,800.00
Pre-hearing conference(s): August 20, 1999	1 session
August 25, 1999	1 session
September 17, 1999	1 session
October 14, 1999	1 session
One Pre-hearing session with Panel x \$1,200.00	= \$1,200.00
Pre-hearing conference: November 16, 1999	1 session
Total Forum Fees	= \$3,000.00

The Panel has assessed \$1,500.00 of the forum fees to Claimant.

The Panel has assessed \$1,500.00 of the forum fees to Respondents Marion Bass and Marion Bass Securities Corp., jointly and severally.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Claimant requested copies of documents from the file at a cost of \$35.00.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$300.00
Forum Fees	= \$1,500.00
Administrative Costs	= \$35.00
Total Fees	= \$1,835.00
<u>Less payments</u>	<u>= \$0.00</u>
Balance Due NASD Regulation, Inc.	= \$1,835.00

Respondent Marion Bass Securities Corp. be and hereby is solely liable for:

Type Filing Fee	= \$1,000.00
Member Fees	= \$6,600.00
Total Fees	= \$7,600.00

<u>Less payments</u>	= \$7,600.00
Balance Due NASD Regulation, Inc.	= \$0.00

Respondents Marion Bass Securities Corp. and Marion Bass be and hereby are jointly and severally liable for:

Forum Fees	= \$1,500.00
<u>Less payments</u>	= \$600.00
Balance Due NASD Regulation, Inc.	= \$900.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

_____/s/_____
Marion Smith, II, Esq.
Public Arbitrator, Presiding Chair

Signature Date

_____/s/_____
Daniel E. Gulden, Esq.
Public Arbitrator

Signature Date

_____/s/_____
Perry L. Taylor, Jr., Esq.
Industry Arbitrator

Signature Date

March 27, 2000

Date of Service (For NASD office use only)


<u>Less payments</u>	= \$7,600.00
Balance Due NASD Regulation, Inc.	= \$0.00

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<u>Less payments</u>	= \$600.00
Balance Due NASD Regulation, Inc.	= \$900.00

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Concurring Arbitrators' Signatures



Marion Smith, II, Esq.
Public Arbitrator, Presiding Chair

3/15/2000

Signature Date

Daniel E. Gulden, Esq.
Public Arbitrator

Signature Date

Perry L. Taylor, Jr., Esq.
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Marion Smith, II, Esq.
Public Arbitrator, Presiding Chair

Signature Date


Daniel E. Gulden, Esq.
Public Arbitrator

3/17/2000
Signature Date

Perry L. Taylor, Jr., Esq.
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Marion Smith, II, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Daniel E. Gulden, Esq.
Public Arbitrator

Signature Date



Perry D. Taylor, Jr., Esq.
Industry Arbitrator

23 March '00
Signature Date

Date of Service (For NASD office use only)