

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Jay A. Johnston (Claimant) vs. Deutsche Bank Securities, Inc. (Respondent)

Case Number: 99-04677

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant Jay A. Johnston, hereinafter referred to as "Claimant": Sean F. O'Shea, Esq., a sole practitioner, New York, NY. Previously represented by: Gerald B. Lefcourt, Esq., Gerald B. Lefcourt, P.C., New York, NY.

Respondent Deutsche Bank Securities, Inc., hereinafter referred to as "Respondent": Ronald M. Green, Esq., Epstein Becker & Green, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: October 15, 1999.

Amended Statement of Claim filed on or about: April 14, 2000.

Claimant signed the Uniform Submission Agreement: October 14, 1999.

Statement of Answer and Counterclaim filed by the Respondent on or about: December 14, 1999.

Response to Amended Statement of Claim filed by Respondent on or about: June 2, 2000.

Respondent signed the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: termination of employment agreement without cause; willful theft of Claimant's vested shares of Deutsche Bank stock; interference with Claimant's relationship with his bank; unpaid compensation; filing of a defamatory U-5; wrongful termination; conversion; *prima facie* tort; and seizure of private e-mail communications in criminal violation of The Stored Electronic Communications Act, 18 U.S.C. section 2, 2702.

Unless specifically admitted in its Answer or Response to the Amended Statement of Claim, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Respondent's decision to terminate Claimant's employment was grounded in a reasonable, good faith belief that Claimant had engaged in conduct that constituted "Cause" for dismissal under the terms of Claimant's offer letter; Claimant's theft claim fails as a matter of law; Respondent's determination that Claimant had an interest in an undisclosed trading account and did partake in undisclosed trades justified a for "Cause" termination; Claimant's defamation claim is barred as statements made in a U-5 are protected by an absolute privilege; the challenged U-5 statement is clearly neither false nor defamatory within

the meaning of New York law; Claimant has not alleged special damages, as required to support a claim of *prima facie* tort; and Claimant never enjoyed proper ownership of the Deutsche Bank shares in question, therefore he cannot claim conversion of said shares.

In its Counterclaim, Respondent asserted the following cause of action: failure to return salary payments mistakenly deposited into Claimant's account for a full month after he was discharged.

### **RELIEF REQUESTED**

Claimant requested that the Panel award him compensatory damages in the amount of \$3,253,155.00 for Respondent's breach of contract and conversion, plus interest; an additional \$40,000,000.00 for Respondent's defamation and *prima facie* tort; an additional \$1,000,000.00 for Respondent's violation of 18 U.S.C. section 2, 2702; punitive damages in the amount of \$25,000,000.00; and the costs of this action, including attorneys' fees. Additionally, Claimant requested that Respondent be directed to amend the U-5 filed for him to remove the false and defamatory statements described in the Amended Statement of Claim.

Respondent requested that the Panel (i) issue an Award in favor of Respondent as to all counts alleged in the Statement of Claim and Amended Statement of Claim and as to Respondent's Counterclaim, (ii) dismiss the Statement of Claim and Amended Statement of Claim in their entirety, with prejudice, and (iii) award Respondent damages on the Counterclaim as well as costs, forum fees, attorney's fees, and such other relief as is deemed appropriate.

### **OTHER ISSUES CONSIDERED AND 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.

### **AWARD**

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

1. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$2,919,824.00 as compensatory damages.
2. Claimant's request for punitive damages is hereby denied.
3. Respondent's Counterclaim is hereby dismissed in its entirety.

4. All other requests for relief are hereby denied.

### **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	= \$ 600.00
Counterclaim filing fee	= \$ 2000.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Deutsche Bank Securities, Inc. is a party.

Member surcharge	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 5,000.00

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

Two (2) Pre-hearing sessions with Panel x \$1,200.00	= \$ 2,400.00
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Pre-hearing conferences:	June 12, 2000	1 session
	July 7, 2000	1 session

Sixteen (16) Hearing sessions x \$1,200.00	= \$19,200.00
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Hearing Dates:	October 10, 2000	2 sessions
	October 12, 2000	2 sessions
	October 13, 2000	2 sessions
	October 30, 2000	2 sessions
	October 31, 2000	2 sessions
	November 1, 2000	2 sessions
	November 2, 2000	2 sessions
	November 3, 2000	2 sessions

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Total Forum Fees	= \$21,600.00
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1. The Panel has assessed \$10,800.00 of the forum fees against Claimant.
2. The Panel has assessed \$10,800.00 of the forum fees against Respondent.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$10,800.00
Total Fees	= \$11,400.00
<u>Less payments</u>	<u>= \$ 1,800.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 9,600.00

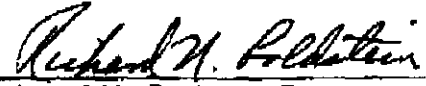
2. Respondent be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 2000.00
Member Fees	= \$ 8,100.00
Forum Fees	= \$10,800.00
Total Fees	= \$19,400.00
<u>Less payments</u>	<u>= \$11,300.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 8,100.00

All balances are due and payable to NASD Dispute Resolution, Inc.

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, 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.

  
Richard N. Goldstein, Esq.  
Public Arbitrator, Presiding Chair

12/22/00  
Signature Date

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John Daly, Esq.  
Public Arbitrator

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Signature Date

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Raymond A. Mando  
Industry Arbitrator

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Signature Date

December 26, 2000  
Date of Service (For NASD office use only)

**Concurring Arbitrators' Signatures**

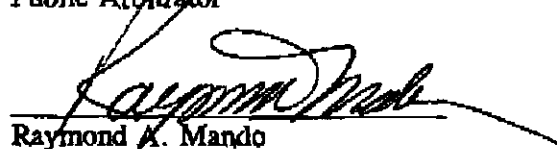
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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Richard N. Goldstein, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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John Daly, Esq.  
Public Arbitrator

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Signature Date

  
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Raymond A. Mando  
Industry Arbitrator

12-21-00  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
December 26, 2000  
Date of Service (For NASD office use only)