

PACIFIC EXCHANGE, INC  
301 Pine Street  
San Francisco, California 94104

In the matter of the Arbitration between

STEVE EDMAN,

Claimant,

vs

CRAIG MILLER, DISCOVER  
BROKERAGE DIRECT, et al.,  
Respondents

DECISION OF THE PANEL

The undersigned Arbitrators, having read and considered the Claim submitted by Claimant Steve Edman ("Claimant" or "Edman") on June 11, 1999, and the Answer of Respondents Discover Brokerage Direct, Inc. ("Discover") and Craig Miller ("Miller")<sup>1</sup> (collectively "Respondents"), having considered all testimony given at the hearing held on June 19 - 20, 2000, lasting 3 hearing sessions, and, having considered all papers submitted in this matter, hereby render the following Decision pursuant to Rule 12.29(a) of the Rules of the Pacific Exchange:

REPRESENTATION OF PARTIES

Of Claimant: Andrew J. Carroll, Esq.,  
*Law Office of Andrew J. Carroll - San Francisco, CA*

Of Respondents: Robert T. Sullwold, Esq  
*Sullwold & Hughes - San Francisco, CA*

SUMMARY OF CASE

Edman was employed by Respondent Discover or its predecessor in interest between 1993 and 1998. In March 1998, he resigned his employment, allegedly under duress from having suffered harassment from Miller and other Discover employees. By this claim, Edman seeks damages for lost salary and bonus.

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<sup>1</sup> Miller was dismissed from the arbitration by stipulation of the parties.

## **STATEMENT OF FACTS**

### **Claimant's Perspective**

Edman was employed in June 1993 as a registered representative by Lombard Securities, the predecessor company to Discover. In January 1997, Lombard's principals asked its employees to give up claims to equity ownership in Lombard in exchange for a bonus agreement. Edman accepted the bonus agreement and became entitled to three bonus payments as follows: \$92,824.00 on signing the bonus agreement, \$69,618.00 on January 31, 1998 and \$69,618.00 on January 31, 1999. Edman became entitled to all three bonus payments unless he resigned voluntarily from the company or if he was terminated for cause.

Lombard was purchased by Dean Witter Discover & Co. (also "Discover") on January 31, 1997. After giving up his equity in the company and accepting the bonus agreement, Miller and other employees of Discover began harassing him and other bonus agreement participants to induce them to resign from the firm. Several bonus-eligible employees did resign. In March 1998, under duress from the harassment, Edman resigned as well.

Edman viewed his resignation as involuntary and demanded his final payment under the bonus agreement. Discover refused to make the payment.

### **Respondent's Perspective**

Edman's participation in the bonus plan was contingent upon his continued employment with Discover. After the sale of Lombard to Discover closed, Edman could not adjust to the more traditional organizational structures implemented at the company by Discover. Edman wanted to head a separate options department, but that idea was rejected and he was assigned to report to the head of the trading department instead. He balked at the chain of command. He resigned voluntarily over a dispute involving a procedure that Discover introduced whereby its traders were required to document the reasons why new account applications were rejected.

## **ISSUES FOR RESOLUTION**

1. Whether Claimant was constructively discharged by Respondent; and
2. Whether Claimant voluntarily resigned.

## **RELIEF REQUESTED**

### **BY CLAIMANT:**

Claimant requests:

- 1 monetary damages in excess of \$69,618 00 for breach of the bonus agreement and his employment agreement;
- 2 prejudgment interest on the bonus of \$15,713 00,
- 3 lost earnings of \$13,528 00,
- 4 moving expenses of \$1,600 00,
- 5 pre-judgment interest on the earnings and moving expenses of \$2,934 00, and
- 6 costs

#### BY RESPONDENT

Respondent denies that Claimant has stated a valid claim under applicable law and under the facts. Respondent denies that Claimant failed to mitigate his damages and is not entitled to attorneys' fees

#### FINDINGS

The arbitration panel after considering all evidence and testimony presented find for Respondent and against Claimant as follows

- 1 Claimant was not constructively discharged from his employment at Discover.
- 2 Claimant resigned from Discover voluntarily

#### AWARD

1. The claim of Claimant Steve Edman against Respondent Discover Brokerage Direct, Inc. is denied and no damages are awarded.
3. Claimant is not awarded reimbursement of his non-refundable filing fee.
4. Claimant is not awarded reimbursement of his hearing session deposit.
5. The parties will bear their own costs and fees.

Date: 7/25/00   
Lawrence E. Curfman, III, Chair

Date: 7-29-2000   
Patricia Frost, Public

Date: 8/1/00   
Richard B. Bullock, Industry