

NASD AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Michael McCabe

and

Case Number

97-03710

Name of Respondent

D. Blech & Co., Inc.

REPRESENTATION OF PARTIES

For Michael McCabe ("Claimant") appeared Ethan A. Brecher, Esq. of the law firm Liddle & Robinson, LLP located in New York, New York.

D. Blech & Co., Inc. ("Respondent") was not represented.

CASE INFORMATION

Claimant filed the Statement of Claim on July 25, 1997.

Claimant signed the Uniform Submission Agreement on July 23, 1997.

Respondent filed its Statement of Answer on October 20, 1997.

HEARING INFORMATION

Pre-Hearing Conference:	December 8, 1997	One Session
	January 14, 1998	One Session
	January 15, 1998	One Session
Hearing Date:	July 15, 1997	One Session

The hearing was held at the NASD Regulation, Inc., New York office.

CASE SUMMARY

According to the Statement of Claim, Claimant agreed to accept employment with Respondent in return for a \$5,000.00 monthly draw; 50% of the gross commissions Claimant earned for Respondent; and 40% of all underwriter warrants earned and/or obtained by Respondent. Claimant maintained that he performed competently and after the first three months consistently earned commissions in excess of his draw. Claimant further alleged that he made demands on Respondent for payment of earned commissions and delivery of the underwriter warrants. However, according to Claimant, Respondent refused to honor the oral agreement.

Respondents denied the allegations set forth in the Statement of Claim. Furthermore, Respondents set forth the following affirmative defenses: 1) that the Statement of Claim failed to state claims upon which relief may be granted; 2) that the claim was barred by the statute of frauds; 3) that the claim was barred by impossibility of performance; 4) that the claim was barred by the doctrine of unclean hands and *pari delicto*; 5) that the claim was barred by the doctrine of waiver and estoppel; and 6) that the claim failed to provide claims upon which punitive damages should be awarded.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in the amount of not less than \$53,000;
2. An order directing Respondent to deliver to him the outstanding due and owing underwriter warrants;
3. Monetary damages for the value of the due and owing underwriter warrants;
4. Interest;
5. Punitive damages in an amount to be determined by the panel;
6. Attorney fees, cost and such other fees the panel deems appropriate.

Respondent denied the claims asserted against it and asked the panel to award it costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators have determined that Respondent has been properly served with the Statement of Claim pursuant to Rules 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that the Respondent received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of this matter would proceed pursuant to Rule 10318 of the Code.

Respondent did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to Rule 10201 of the Code and having answered the claim, and received notice of the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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 D. Blech & Co., Inc., is liable to and shall pay Claimant Michael McCabe the sum of \$53,489.25, plus interest at the legal rate accruing from November 1, 1994 until the date the award is satisfied.
2. The following warrants have been awarded to Claimant and Respondent is directed to transfer ownership of the warrants to Claimant:

Name	Symbol	Number of Warrants
Epoch Corp.	EPPH	704
Incyte	INCY	1120
Escalon Medical	ESMC	280
Texas Biotechnology	TXB	2048
Procept Corp.	PRCT	896
Bio Septra Corp.	BSEP	980
Hemasure	HMSR	920
Bio Technology	LXR	820
Ariad	ARIA	600
Guilford	GLFD	1140
Gene Medicine Inc.	GMED	980
Sight Resources	VISN	2000
3. Monetary damages for the value of the due and underwriter warrants is denied.
4. Claimant's request for punitive damages is denied.
5. The request for attorney fees and other costs are denied.

6. Any and all relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332 of the NASD Code of Arbitration Procedure, the NASD will retain the \$500.00 filing fee deposited by the Claimant.

The arbitrators have assessed the following forum fees:

3 Pre-Hearing Conference	x	\$750.00	=	\$2,250.00
1 Hearing Sessions	x	\$750.00	=	<u>\$ 750.00</u>
Total Forum Fees			=	\$3,000.00

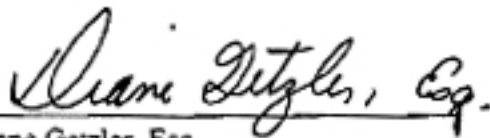
Respondent is assessed fees in the sum of \$3,000 representing all of the forum fees assessed. Claimant previously deposited a \$750.00 hearing session deposit. Therefore, Respondent shall pay to NASD Regulation the sum of \$2,250.00. Moreover, the Panel directs the Respondent to reimburse Claimant \$750.00 representing the hearing session deposit as specified in the award section.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

Diane Getzler, Esq. -Public Chairperson
Lawrence Siegel -Public Panelist
Thomas Turley -Industry Panelist

ARBITRATOR'S SIGNATURE



Diane Getzler, Esq.
Public Chairperson

Date Decision Served by NASD Regulation, Inc.: _____

I, Diane Getzler, Esq., 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.

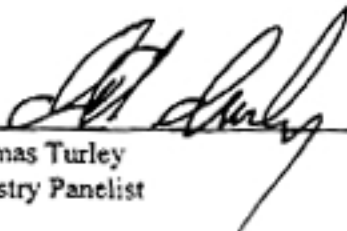


Diane Getzler, Esq.

ARBITRATION PANEL

Diane Getzler, Esq. -Public Chairperson
Lawrence Siegel -Public Panelist
Thomas Turley -Industry Panelist

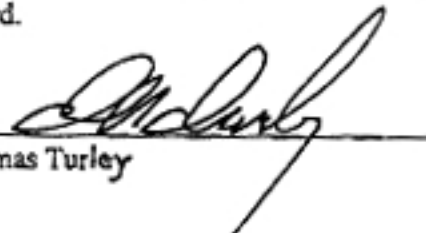
ARBITRATOR'S SIGNATURE



Thomas Turley
Industry Panelist

Date Decision Served by NASD Regulation, Inc.: _____

I, Thomas Turley, 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.



Thomas Turley