

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

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In the Matter of the Arbitration Between:

Kevin S. Flannery, (Claimant) vs. Solid ISG Capital Markets, LLC and Solid Capital U.S.,  
(Respondents)

Case Number: 00-03633

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Kevin S. Flannery, hereinafter referred to as "Claimant", appeared *pro se*.

Respondent, Solid ISG Capital Markets, LLC ("Solid ISG"): Louis F. Burke, Esq., Louis F. Burke, P.C., New York, NY.

Respondent, Solid Capital U.S. ("Solid Capital"), did not make an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: August 17, 2000.

Response to Counterclaim filed by Claimant on or about: July 23, 2001.

Claimant signed the Uniform Submission Agreement: August 10, 2000.

Statement of Answer and Counterclaim filed by Solid ISG on or about: December 13, 2000

Solid ISG signed the Uniform Submission Agreement: November 30, 2000.

Solid Capital did not file a Statement of Answer or sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; failure to pay Claimant for accumulated vacation time upon his resignation; and unpaid commissions.

Unless specifically admitted in its Answer, Solid ISG denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant has failed to state a cause of action upon which relief can be granted; Claimant is barred by the doctrines of ratification, estoppel, waiver, laches, and unclean hands; Claimant's claims are precluded by his breach of the agreement between himself and Solid ISG; Claimant has suffered no damages and/or failed to mitigate damages, if any; and Claimant's damages, if any, are the result of his own conduct.

In its Counterclaim, Solid ISG asserted the following cause of action: breach of contract.

Unless specifically admitted in his Response, Claimant denied the allegations made in the Counterclaim and asserted the following defense: if Claimant's behavior constitutes a breach of his contract, it is an example of the fraudulent presentation made to induce Claimant to sign on with Solid ISG.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$28,183.27, plus forum fees in the amount of \$600.00, costs, and attorneys' fees.

In his post-hearing submission dated March 26, 2002, Claimant requested the amount of \$8,946.20, for "extraordinary expenses and lost revenue caused by Solid ISG's extreme delaying tactics".

Solid ISG requested an Award:

- a. Dismissing and expunging this case in its entirety;
- b. On the Counterclaim, damages in the approximate amount of \$50,000.00, based upon Claimant's breach of contract;
- c. Imposing the forum fees on Claimant;
- d. Requiring Claimant to reimburse Solid ISG for the costs and attorneys' fees reasonably incurred by Solid ISG in having to respond to this matter; and
- e. For such other and further relief as the Panel deems just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Solid Capital was not a member of the NASD, Inc. or an associated person during the period of time in dispute, and declined to voluntarily submit to the jurisdiction of NASD Dispute Resolution, Inc. in this matter.

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. Solid ISG be and hereby is liable for and shall pay to Claimant the sum of \$27,532.24 as compensatory damages, plus interest at the rate of 9% accruing from August 15, 2000 until paid.
2. Solid ISG be and hereby is liable for and shall pay to Claimant the sum of \$982.07 as costs.
3. Solid ISG be and hereby is liable for and shall pay to Claimant the sum of \$150.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution, Inc.
4. Solid ISG's Counterclaim is hereby dismissed in its entirety.
5. 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	= \$ 150.00
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 that employed the associated person at the time of the events giving rise to the dispute. In this matter, Solid ISG Capital Markets, LLC is a party.

Member surcharge	= \$ 600.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

February 22, 2002, adjournment by Solid ISG = \$ 600.00

### **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:

One (1) Pre-hearing session with Panel x \$600.00 = \$ 600.00

Pre-hearing conference: July 10, 2001 1 session

Six (6) Hearing sessions x \$600.00 = \$3,600.00

Hearing Dates: February 5, 2002 2 sessions

March 19, 2002 2 sessions

March 27, 2002 2 sessions

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Total Forum Fees = \$4,200.00

1. The Panel has assessed \$900.00 of the forum fees against Claimant.
2. The Panel has assessed \$3,300.00 of the forum fees against Solid ISG.

### **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.

1. Solid ISG, requested copies, \$117.00.
2. Solid ISG, requested tapes, \$120.00.

### **Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee = \$ 150.00

Forum Fees = \$ 900.00

Total Fees = \$1,050.00

Less payments = \$ 750.00

Balance Due NASD Dispute Resolution, Inc. = \$ 300.00

2. Solid ISG be and hereby is solely liable for:	
Counterclaim Filing Fee	= \$1,000.00
Member Fees	= \$2,200.00
Adjournment Fee	= \$ 600.00
Forum Fees	= \$3,300.00
<u>Administrative Costs</u>	<u>= \$ 237.00</u>
Total Fees	= \$7,337.00
<u>Less payments</u>	<u>= \$2,320.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$5,017.00

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

**ARBITRATION PANEL**

Dan Brecher, Esq.	-	Public Arbitrator, Presiding Chair
Joseph J. Arata, Esq.	-	Public Arbitrator
Patrick J. O'Neil	-	Industry Arbitrator

**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.



Dan Brecher, Esq.  
Public Arbitrator, Presiding Chair

April 11, 2002  
Signature Date

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Joseph J. Arata, Esq.  
Public Arbitrator

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Signature Date

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Patrick J. O'Neil  
Industry Arbitrator

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Signature Date

April 12, 2002  
Date of Service (For NASD office use only)

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Signature Date

  
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Joseph J. Arata, Esq.  
Public Arbitrator

4-12-02  
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Signature Date

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Patrick J. O'Neil  
Industry Arbitrator

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