

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

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In the Matter of the Arbitration Between:

Claimant/CounterRespondent

John E. Banta

Case Number: 00-4375

Respondent/CounterClaimant

James A. Hunt

Hearing Site: Chicago, Illinois

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**REPRESENTATION OF PARTIES**

Claimant/CounterRespondent, John L. Banta, hereinafter referred to as "Banta": Christopher Barber, Esq. and Shawn Y. Valukas, Esq. of the law firm Piper Marbury Rudnick & Wolfe located in Chicago, Illinois

Respondent/CounterClaimant, James A. Hunt, hereinafter referred to as "Hunt": Steven J. Rutunno, Esq. of the firm Kubasiak Cremieux Fylstra Reizen & Rotunno, PC located in Chicago, Illinois and Lawrence H. Hunt, Jr. of the firm Sidley Austin Brown & Wood located in Chicago, Illinois

**CASE INFORMATION**

Statement of Claim filed (on or about): October 02, 2000

Answer to CounterClaim filed by Banta on or about: January 04, 2001

Answer to Amended CounterClaim filed by Banta on or about: November 02, 2001

Banta, signed the Uniform Submission Agreement: September 28, 2000

Banta's PreHearing Brief filed on or about: April 23, 2002

Banta's Affidavit in Support of Request for Attorney's Fees filed on or about: May 06, 2001

Statement of Answer and CounterClaim filed by Hunt on or about: December 07, 2000

Amended Answer and Amended CounterClaim filed by Hunt on or about: October 22, 2001

Hunt signed the Uniform Submission Agreement: November 10, 2000

Hunt's Hearing Brief filed on or about: April 22, 2002

Hunt's Petition for Attorney's Fees and Cost filed on or about: May 06, 2002

Hunt's Response to Banta's Affidavit in Support of Request for Attorney's Fees filed on or about: May 13, 2001

**Motions:**

Hunt's Motion for Summary Dismissal filed on or about: February 01, 2002

Banta's Response to Motion for Summary Dismissal filed on or about: February 01, 2002

Hunt's Motion to Dismiss for Lack of Jurisdiction filed on or about: April 04, 002

Banta's Response to Motion to Dismiss for Lack of Jurisdiction filed on or about: April 08, 2002

### CASE SUMMARY

The causes of action relate to a partnership agreement between Banta and Hunt.

In his Statement of Claim Banta asserted the following causes of action: Breach of Partnership Agreement, Quantum Meruit, and Conversion.

In his CounterClaim Hunt asserted the following cause of action: Defamation, Breach of Agreement, Declaration of Rights, and Unjust Enrichment.

Unless specifically admitted in his Answer, Hunt denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Failure to set forth a claim for relief;
2. NASD Rules do not permit registered representative of member firms to share commissions with a registered representative of another broker-dealer;
3. The alleged contract was void and/or voidable at its inception;
4. NASD Rules do not permit registered representative of member firms to share commissions with registered representative and persons not affiliated with the NASD;
5. The Illinois Statute of Frauds bars Banta's claim for breach of contract since the contract is not in writing and cannot be performed within one year;
6. Unclean Hands;
7. Doctrine of *in pari delicto*;
8. Failure to mitigate damages;
9. To the extent Banta is entitled to any recovery, it is subject to a set-off in the amount of all damages Banta caused Hunt, along with any payment from PaineWebber that Banta has received since Hunt's resignation, and the value of any accounts and commissions relation to accounts that did not transfer to Hunt at Morgan Stanley; and
10. Banta's Claim is barred because he committed numerous material breaches of the alleged contract(s) by which he seeks to recover.

Unless specifically admitted in his Answer to Amended CounterClaim, Banta denied the allegation made in the Amended CounterClaim.

### RELIEF REQUESTED

Banta originally requested relief in excess of \$1,000,000.00

At hearing Banta Requested:

Compensatory Damages	\$659,181.00
Interest	pre-judgment interest
Attorneys' Fees and Costs	\$63,000.00
Other Monetary/NonMonetary Relief:	return of personal and professional files as well as computer equipment

Hunt requested:

Compensatory Damages	\$200,000.00
Punitive Damages	\$400,000.00
Attorneys' Fees	\$ 81,729.50
Costs	\$ 1,620.27
Other Monetary/Non-Monetary Relief:	disgorgement of all proceeds and profits received from the shared book of business at any time in which Banta was devoting less than his full efforts to the book of business and any other relief the panel finds just

**OTHER ISSUES CONSIDERED AND DECIDED**

After considering Hunt's Motion for Summary Dismissal and Banta's Response, the panel issued an order dated February 27, 2002 denying the motion.

On April 19, 2002, the panel heard argument on Hunt's Motion to Dismiss for Lack of Jurisdiction. The Panel issued an order on April 22, 2002 ruling that Hunt's Motion to Dismiss for Lack of Jurisdiction was mooted by the actions of the parties.

**AWARD**

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

1. James A. Hunt is liable for and shall pay to John E. Banta the sum of \$287,970.72 as compensatory damages.
2. James A. Hunt is liable for and shall pay to John E. Banta the sum of \$17,508.62 as interest.
3. James A. Hunt is liable for and shall pay to John E. Banta the sum of \$61,855.28 as attorney's fees. In deciding to award attorney's fees, the panel considered the parties' submissions and arguments and found that authority exists for such an award in accordance with relevant case law and NASD Rules.
4. James A. Hunt is liable for and shall pay to John E. Banta the sum of \$500.00 as reimbursement of the NASD non-refundable filing fee, pursuant to Rule 10332 (c) of the NASD Code of Arbitration Procedure.
5. Any and all claims asserted by James A. Hunt against John E. Banta are denied in their entirety.
6. Parties shall bear their own costs of arbitration, including any additional attorney's fees not mentioned herein.
7. Any and all relief not specifically addressed herein, including punitive damages, is 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 = \$ 500.00

CounterClaim filing fee = \$ 375.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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:

Three (3) Pre-hearing sessions with a single arbitrator at \$450.00 = \$1,350.00

Pre-hearing conferences:	August 20, 2001	1 session
	October 11, 2001	1 session
	October 22, 2001	1 session

Four (4) Pre-hearing sessions with Panel at \$1,200.00 = \$4,800.00

Pre-hearing conferences:	June 29, 2001	1 session
	November 05, 2001	1 session
	April 11, 2002	1 session
	April 19, 2002	1 session

Five (5) Hearing sessions at \$1,200.00 = \$6,000.00

Hearing Dates:	April 29, 2002	2 sessions
	April 30, 2002	2 sessions
	May 01, 2002	1 session

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Total Forum Fees = \$12,150.00

The Panel has assessed \$12,150.00 of the forum fees to James A. Hunt.

**Fee Summary**

1. John E. Banta, is solely liable for:

Initial Filing Fee	= \$ 500.00
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Total Fees	= \$ 500.00
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Less payments	= \$ 1,700.00
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Refund Due from NASD Dispute Resolution, Inc.	= \$ 1,200.00
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2. James A. Hunt, is solely liable for:

CounterClaim Filing Fee	= \$ 375.00
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Forum Fees	= \$12,150.00
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Total Fees	= \$12,525.00
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Less payments	= \$ 0.00
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Balance Due NASD Dispute Resolution, Inc.	= \$12,525.00
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NASD Dispute Resolution, Inc.

Arbitration No. 00-04375

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All balances are payable to NASD Dispute Resolution, Inc. and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Daniel R. Formeller, Esq. - Public, Presiding Chairperson

Judd A. Sackheim - Public Arbitrator

Randall C. Schakner - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Daniel R. Formeller

June 18, 2002

\_\_\_\_\_  
Daniel R. Formeller, Esq.  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

/s/ Judd A. Sackheim

June 18, 2002

\_\_\_\_\_  
Judd A. Sackheim  
Public Arbitrator

\_\_\_\_\_  
Signature Date

/s/ Randall C. Schakner

June 18, 2002

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Randall C. Schakner  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

June 20, 2002

Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution, Inc.

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Public Arbitrator, Presiding Chairperson

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Signature Date

Judd A. Sackheim

Public Arbitrator

Signature Date

Randall C. Schakner

Non-Public Arbitrator

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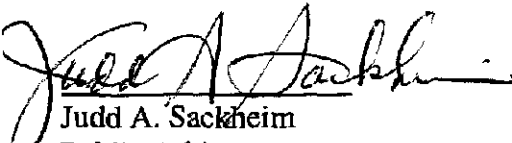
Randall C. Schakner - Non-Public Arbitrator

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Daniel R. Formeller, Esq.

Public Arbitrator, Presiding Chairperson

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Signature Date

  
Judd A. Sackheim  
Public Arbitrator

6/18/02  
Signature Date

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Randall C. Schakner  
Non-Public Arbitrator

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Randall C. Schakner - Non-Public Arbitrator

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