

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Avrum Aaron and Yigal Marcus vs. Gerber Asset Management, L.L.C., f/k/a Balfour Asset Management, L.L.C., Gerber Capital Management, Inc., and Sander Gerber.

Case Number: 00-04576

Hearing Site: New York, NY

REPRESENTATION OF PARTIES

Claimants, Avrum Aaron ("Aaron") and Yigal Marcus ("Marcus"), hereinafter collectively referred to as "Claimants": Jay S. Auslander, Esq., and Natalie Shkolnik, Esq., Siller Wilk LLP, NY. Previously represented by Robert Weintraub, Esq., Wolf Haldenstein Adler Freeman & Herz LLP, New York, NY.

Respondents, Gerber Asset Management, L.L.C., f/k/a Balfour Asset Management, L.L.C., ("Gerber Asset") and Gerber Capital Management, Inc., ("Gerber Capital") and Sander Gerber (Gerber) hereinafter collectively referred to as "Respondents": Jonathan Gardner, Esq., and Thomas A. Dubbs, Esq., Goodkind Labaton Rudoff & Sucharow LLP, New York, NY. Previously represented by Lauren Reiter Brody, Esq., and Jonathan J. Faust, Esq., Rosenman & Colin, LLP., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: October 16, 2000

First Amended Statement of Claim filed on or about: January 18, 2001

Letter in response to Motion to Dismiss filed on or about: February 14, 2001

Claimant Aaron signed the Uniform Submission Agreement: October 10, 2000

Claimant Marcus signed the Uniform Submission Agreement: October 10, 2000

Joint Motion to Dismiss and Answer filed by Respondents Gerber Asset, Gerber Capital and Gerber on or about: December 27, 2000

Joint Motion to Dismiss and Answer to First Amended Statement of Claim filed by Respondents Gerber Asset, Gerber Capital and Gerber on or about: February 1, 2001

Joint Amended Answer to First Amended Statement of Claim and Counterclaims filed by Respondents Gerber Asset, Gerber Capital and Gerber on or about: February 7, 2002

Respondents Gerber Asset, Gerber Capital and Gerber signed the Uniform Submission Agreement: December 22, 2000.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract, willful failure to pay wages, fraudulent inducement, intentional infliction of emotional distress, tortious interference with prospective business relations, defamation and prima facie tort.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and Amended First Statement of Claim and asserted various affirmative defenses.

In their Counterclaims, Respondents Gerber Asset, Gerber Capital and Gerber asserted the following causes of action: violation of confidentiality and non-disclosure provisions in their respective written employment agreements, wrongful misappropriation of trade secrets and confidential information.

RELIEF REQUESTED

Claimants requested:

1. On the first claim for breach of contract, damages in the amount of \$375,000.00 at least;
2. On the second claim for breach of contract, damages in the amount of at least \$228,301.37;
3. On the third claim for willful failure to pay wages under New York Labor Law §§ 191-c and 198, double damages in the amount of \$750,00.00, and liquidated damages in the amount of \$93,750;
4. On the fourth claim for willful failure to pay wages under New York Labor Law §§ 191-c and 198, double damages in the amount of \$273,602.74, and liquidated damages in the amount of \$34,200.34;
5. On the fifth claim for fraudulent inducement, compensatory and punitive damages in an amount to be determined by the panel, but at least \$500,000;
6. On the sixth claim for intentional infliction of emotional distress, compensatory and punitive damages in an amount to be determined by the Panel, but at least \$50,000.00;
7. On the seventh claim tortious interference with prospective business relations, compensatory and punitive damages in an amount to be determined by Panel, but at least \$10,000.00;
8. On the eighth claim for prima facie tort, compensatory and punitive damages in an amount to be determined by the Panel, but at least \$50,000.00;

9. On the ninth claim for defamation, compensatory, special, and punitive damages in an amount to be determined by the Panel, but at least \$50,000, and an order by the Panel directing the Exchange and any other SRO which has a copy of Aaron's Form U-5 on file to expunge the U-5 from their records.
10. The costs and disbursements of this proceeding, plus interest according to law;
11. Any other relief the Panel deems proper.

Respondents requested:

1. The return of the \$30,000.00 bonus payment and severance payments made to Aaron;
2. Injunctive relief: Barring claimants from (i) further participation in respondents' Holdr arbitrage market and (ii) further use of any basket trading system similar to the system used by respondents. Each of Marcus and Aaron expressly consented to the issuance of injunctive relief against them "in the event of a breach or threatened breach...of any... obligation" under their respective employment agreements (See Statement of Claim Exh. A § 8, p.5 [Marcus]; Statement of Claim Exh. B, § 5, p.3[Aaron]);
3. Accounting: Of any and all profits derived as a result of claimants' misappropriation of respondents confidential information;
4. Liquidated Damages: Marcus expressly agreed to pay respondents "Liquidated Damages" in the amount of \$250,000 in the event respondents incur any injury before an injunction is issued (Statement of Claim Exh. A, § 9, p.5).

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.

The parties agreed to a non-public panel.

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. Respondents are jointly and severally liable and shall pay to Claimant Aaron \$22,288.18 as compensatory damages.
2. Respondents are jointly and severally liable and shall pay to Claimant Marcus \$25,000.00 as compensatory damages.

3. Respondents' counterclaims are dismissed in their entirety.
4. All requests for attorneys' fees are denied.
5. Claimant Aaron's request for the Exchange and any SRO to expunge Form U-5 from their records is denied.
6. Any and all relief not specifically addressed herein, including punitive damages, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 500.00
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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Gerber Asset Management L.L.C. f/k/a Balfour Asset Management, L.L.C. is a party.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$4,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

January 15-16, 2002, adjournment by Respondents	= \$1,200.00
July 9 & 11, 2002, adjournment by Claimants	= \$ 600.00
July 9 & 11 2002, adjournment by Respondents	= \$ 750.00

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:

Six (6) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 7,200.00
Pre-hearing conferences: April 5, 2001	1 session

May 14, 2001	1 session
August 1, 2001	1 session
May 30, 2002	1 session
July 2, 2002	1 session
November 1, 2002	1 session

Eight (8) Hearing sessions with Panel @ \$1,200.00 = \$ 9,600.00

Hearing Dates:	March 17, 2003	2 sessions
	March 19, 2003	2 sessions
	May 12, 2003	2 sessions
	July 8, 2003	2 sessions

Total Forum Fees = \$16,800.00

1. The Panel has assessed \$8,400.00 of the forum fees against Claimants Aaron and Marcus jointly.
2. The Panel has assessed \$8,400.00 of the forum fees against Respondents Gerber Asset, Gerber Capital and Gerber jointly.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

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|---|------------|
| 1. Claimants Aaron and Marcus, copies of audio tapes | = \$120.00 |
| 2. Claimants Aaron and Marcus, copies of audio tapes | = \$ 60.00 |
| 3. Claimants Aaron and Marcus, photocopies | = \$ 3.00 |
| | |
| 1. Respondents Gerber Asset, Gerber Capital & Gerber, copies of audio tapes | = \$120.00 |
| 2. Respondents Gerber Asset, Gerber Capital & Gerber, copies of audio tapes | = \$ 60.00 |
| 3. Respondents Gerber Asset, Gerber Capital & Gerber, photocopies | = \$ 1.25 |

Fee Summary

1. Claimants are jointly liable for:

Initial Claim Filing Fee	= \$ 500.00
Administrative Costs	= \$ 183.00
Adjournment Fee	= \$ 600.00
Forum Fees	= \$8,400.00
Total Fees	= \$9,683.00
<u>Less payments</u>	<u>= \$1,700.00</u>
Balance Due NASD Dispute Resolution	= \$7,983.00

2. Respondent Gerber Asset is solely liable for:

Member Fees	= \$ 7,600.00
<u>Less payments</u>	<u>= \$ 7,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly liable for:

Counterclaim Filing Fee	= \$ 1,000.00
Adjournment Fee	= \$ 1,950.00
Forum Fees	= \$ 8,400.00
<u>Administrative Costs</u>	<u>= \$ 181.25</u>
Total Fees	= \$ 11,531.25
<u>Less payments</u>	<u>= \$ 6,380.00</u>
Balance Due NASD Dispute Resolution	= \$ 5,151.25

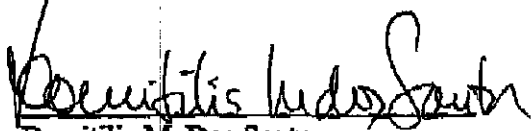
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Domitilia M. Dos Santos - Non-Public Arbitrator, Presiding Chair
John J. Bucko - Non-Public Arbitrator
John J. Phelan, Esq. - Non-Public 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 in which is my award.


Domitilia M. Dos Santos
Non-Public Arbitrator, Presiding Chairperson


Signature Date

John J. Bucko
Non-Public Arbitrator

Signature Date

John J. Phelan, Esq.
Non-Public Arbitrator

Signature Date

September 12, 2003

Date of Service (For NASD Dispute Resolution use only)

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Non-Public Arbitrator, Presiding Chairperson

Signature Date



John J. Bucko
Non-Public Arbitrator

9/11/2003

Signature Date

John J. Phelan, Esq.
Non-Public Arbitrator

Signature Date

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John J. Bucko
Non-Public Arbitrator

Signature Date



John J. Phelan, Esq.
Non-Public Arbitrator

9/11/03

Signature Date

September 12, 2003

Date of Service (For NASD Dispute Resolution use only)