

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

D.E. Frey & Company, Inc.

and

00-05213

Denver, Colorado

Name of Respondent

James J. O'Brien

REPRESENTATION OF PARTIES

D.E. Frey & Company ("**Claimant**") was represented by Kenneth R. Bennington, Esq., Bennington Johnson & Reeve, P.C., Denver, Colorado.

James J. O'Brien ("**Respondent**") was represented by William D. Nelson, Esq., Rothergerber, Johnson & Lyons, Denver, Colorado

CASE INFORMATION

The Statement of Claim was filed on or about November 22, 2000. Submission Agreement of Claimant D.E. Frey & Company was signed on November 21, 2000 by Paul L. Hocer.

Statement of Answer was filed by Respondent James J. O'Brien on or about February 5, 2001. Submission Agreement of Respondent James J. O'Brien was signed on January 26, 2001.

CASE SUMMARY

Claimant alleged that pursuant to its Branch Office Agreement with Respondent, Respondent is required to indemnify Claimant for amounts paid by Claimant to settle claims asserted against it by customers in two arbitrations. The causes of action asserted included: Indemnification, Common Law Indemnification and Contribution.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that the underlying problems giving rise to the arbitration were caused by dissemination of inaccurate marketing materials by Claimant, rather than the actions of Respondent. Respondent asserted affirmative defenses including the failure to Statement of Claim upon which relief could be granted.

RELIEF REQUESTED

Claimant requested an award in the amount of \$506,500 in actual damages, costs and attorney's fees of \$38,000, pre and post judgment interest, and all other relief the panel deems appropriate.

Respondent requested that the claims asserted against him be denied in its entirety and that he be awarded his costs and attorney's fees.

OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent James J. O'Brien is liable for and shall pay Claimant D.E. Frey & Company, Inc. compensatory damages of \$74,030 (seventy four thousand and thirty dollars).
2. All monies and other consideration received pursuant to the assignments in Settlement Agreement and Assignment effective as of August 1, 1999 between and among D.E. Frey & Company, Inc., James O'Brien, Roger L. Crouse and Sterling Trust Company and the Settlement Agreement and Assignment effective as of May 18, 2000 between and among D. E. Frey & Company, Inc. James O'Brien, John Lasher, James Ray, Leslie White and Francis A. Skolnik and any insurance payments received, including pursuant to policy number CRLG1820955A issued by Illinois Union Insurance Company, shall be paid solely to D.E. Frey & Company, Inc. and no portion of any such monies or other consideration shall be due or payable to James J. O'Brien.
3. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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 = \$1,250.00

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, the member firm is D.E. Frey & Company, Inc.

Member surcharge = \$2,000.00
Pre-hearing process fee = \$600.00
Hearing process fee = \$3,500.00

Forum Fees and Assessments

The Arbitration 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 \$1,200.00 = \$1,200.00
Pre-hearing conference: May 1, 2001 1 session

Four (4) Hearing sessions x \$1,200.00 = \$4,800.00
Hearing Dates: September 5, 2001 2 sessions
September 6, 2001 2 sessions

Total Forum Fees = \$6,000.00

The Arbitration Panel has assessed \$6,200.00 of the forum fees to Respondent James J. O'Brien.

Fee Summary

Claimant, D.E. Frey & Company, Inc. shall be and hereby is liable for:

Initial Filing Fee	= \$1,250.00
Member Fees	= \$6,100.00
Filing Fee	= \$1,250.00
<u>Forum Fees</u>	= \$.00
Total Fees	= \$7,350.00
<u>Less payments</u>	= \$8,550.00
Refund Due:	= \$1,200.00

Respondent, James J. O'Brien, shall be and hereby is liable for:

Forum Fees = \$6,000.00

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Total Fees	= \$6,000.00
<u>Less payments</u>	<u>= \$.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$6,000.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Harold Golz – Non-Public Arbitrator, Presiding Chair
Dennis Dowd -Non-Public Arbitrator
Cletus E. Byrne, Jr. - Non-Public Arbitrator

Concurring Arbitrators:

Harold Golz
Public Arbitrator, Presiding Chair

Signature Date

Dennis Dowd
Public Arbitrator

Signature Date

Cletus E. Byrne, Jr.
Non-Public Arbitrator

Signature Date

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Total Fees

= \$6,000.00

Less payments

= \$0.00

Balance Due NASD Dispute Resolution, Inc.

= \$6,000.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

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Dennis Dowd - Non-Public Arbitrator
Cletus E. Byrne, Jr. - Non-Public Arbitrator

Concurring Arbitrators:


Harold Golz

Public Arbitrator, Presiding Chair

10/24/01
Signature Date


Dennis Dowd

Non-Public Arbitrator

Signature Date


Cletus E. Byrne, Jr.

Non-Public Arbitrator

Signature Date

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Total Fees

Less payments

Balance Due NASD Dispute Resolution, Inc.

= \$6,000.00

= \$0.00

= \$6,000.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Harold Golz - Non-Public Arbitrator, Presiding Chair

Dennis Dowd - Non-Public Arbitrator

Cletus E. Byrne, Jr. - Non-Public Arbitrator

Concurring Arbitrators:

Harold Golz

Public Arbitrator, Presiding Chair

Dennis Dowd

Dennis Dowd

nm - Public Arbitrator

Signature Date

October 28, 2001

Signature Date

Cletus E. Byrne, Jr.

Non-Public Arbitrator

Signature Date

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Total Fees	= \$6,000.00
<u>Less payments</u>	= <u>\$.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$6,000.00

All balances are due to NASD Dispute Resolution, Inc.

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Dennis Dowd - Non-Public Arbitrator
Cletus E. Byrne, Jr. - Non-Public Arbitrator

Concurring Arbitrators:

Harold Golz
Public Arbitrator, Presiding Chair

Signature Date

Dennis Dowd
Public Arbitrator

Signature Date

nm 
Cletus E. Byrne, Jr.
Non-Public Arbitrator

10/24/2001
Signature Date