

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Richard A. Diglio, (Claimant) vs. Investor's Advocate, LLC, Jason Watkins, and Steven Maczka, (Respondents)

and

Investor's Advocate, LLC, (Claimant) vs. Richard A. Diglio, (Respondent)

Case Number: 00-05277(Consolidated w/00-05375)

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Richard A. Diglio ("Diglio"), appeared *pro se*. Previously represented by: Richard C. Fooshee, Esq., a sole practitioner, New York, NY.

Respondents, Investor's Advocate, LLC ("IA"), Jason Watkins ("Watkins"), and Steven Maczka ("Maczka"), did not appear at the hearing in this matter. Previously represented by: Steven Maczka, CEO, Investor's Advocate, LLC, Grand Blanc, MI.

CASE INFORMATION

Statement of Claim filed by Diglio on or about: November 29, 2000.

Amended Statement of Claim and Statement of Answer to IA's Statement of Claim filed by Diglio on or about: February 21, 2001.

Diglio signed the Uniform Submission Agreement: November 20, 2000.

Joint Statement of Answer to Diglio's Statement of Claim filed by IA, Watkins, and Maczka on or about: March 20, 2001.

Watkins did not sign a Uniform Submission Agreement.

Maczka did not sign a Uniform Submission Agreement.

Statement of Claim filed by IA on or about: November 29, 2000.

Amended Statement of Claim filed by IA on or about: March 20, 2001.

IA signed the Uniform Submission Agreement: November 29, 2000.

CASE SUMMARY

Diglio asserted the following causes of action: unpaid wages; failure to reimburse Diglio for moving expenses as promised; violation of section 190 of the New York Labor Law; and defamation on Form U-5.

Unless specifically admitted in their Answer, IA, Watkins, and Maczka denied the allegations made in Diglio's Statement of Claim and Amended Statement of Claim.

IA asserted the following causes of action: breach of duty to supervise IA's New York office resulting in employee theft and failure to properly close IA's New York office.

Unless specifically admitted in his Answer, Diglio denied the allegations made in IA's Statement of Claim and Amended Statement of Claim and asserted the following defenses: Diglio was not responsible for supervising the New York office during the relevant time period; as far as Diglio knows, the New York office was closed for lack of production, and for no other reason; and Diglio is not aware of any employee theft that ever took place at the New York office, and was not aware of any allegations of same until the filing of IA's Statement of Claim.

RELIEF REQUESTED

In his Amended Statement of Claim, Diglio requested:

- a. Compensatory damages in the amount of \$20,232.19 for unpaid wages and moving expenses;
- b. Compensatory damages in an amount to be determined at the hearing for defamation;
- c. Injunctive relief directing Respondents to file an amended Form U-5 in order to mitigate the damage done to Diglio's reputation;
- d. An Order that any reference to any internal review of Diglio by IA be immediately expunged from his Form U-5;
- e. A referral to NASD Regulation to investigate the improper conduct of Respondents in filing a false Form U-5;
- f. Pre-Award interest and the costs and expenses of bringing this action, including reasonable attorneys' fees and forum fees; and
- g. Such other and further relief as the Panel deems just and appropriate.

IA, Watkins, and Maczka did not make any relief requests in their Statement of Answer.

In its Amended Statement of Claim, IA requested:

- a. Compensatory damages in the amount of \$75,000.00.99;
- b. Pre-award interest and the costs and expenses of bringing this action, including filing fees and forum fees; and
- c. Any additional relief that the Panel deems just and appropriate.

Diglio did not make any relief requests in his Statement of Answer.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by Diglio, the undersigned arbitrators (the "Panel") determined that IA, Watkins, and Maczka have been properly served with the Statement of Claim and Amended Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without IA, Watkins, and Maczka present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Watkins and Maczka did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the 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.

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. IA, Watkins, and Maczka be and hereby are jointly and severally liable for and shall pay to Diglio the sum of \$10,857.19 as compensatory damages, plus interest at the rate of 9% for the period of October 30, 2000 through May 31, 2002 totaling \$1,547.14.
2. The Panel recommends the expungement of the "yes" answer to question 15 on Diglio's Amended Form U-5 dated February 14, 2001, to be immediately replaced with a "no" answer, and all references to Diglio's termination, based on the defamatory nature of the information, as well as the expungement of all reference to the above-captioned arbitration from Diglio's registration records maintained by the NASD Central Registration Depository.

3. The Panel recommends the expungement of the "yes" answer to question 15 on Diglio's Amended Form U-5 dated November 29, 2000, to be immediately replaced with a "no" answer, and all references to Diglio's termination, based on the defamatory nature of the information, as well as the expungement of all reference to the above-captioned arbitration from Diglio's registration records maintained by the NASD Central Registration Depository.
4. IA's claims against Diglio are hereby dismissed in their entirety.
5. IA, Watkins, and Maczka be and hereby are jointly and severally liable for and shall pay to Diglio the sum of \$125.00, to reimburse Diglio for the filing fee previously paid to NASD Dispute Resolution, Inc.
6. 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 (Diglio) | = \$ 125.00 |
| Initial claim filing fee (IA) | = \$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 persons at the time of the events giving rise to the dispute. In this matter, Investor's Advocate, LLC is a party.

| | |
|-----------------------------|--------------|
| Member surcharge (00-05277) | = \$ 400.00 |
| Member surcharge (00-05375) | = \$1,000.00 |
| Pre-hearing process fee | = \$ 600.00 |
| Hearing process fee | = \$1,500.00 |

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:

Three (3) Pre-hearing sessions with Panel x \$750.00 = \$2,250.00

Pre-hearing conferences: July 30, 2001 1 session
 August 13, 2001 1 session
 March 1, 2002 1 session

One (1) Hearing session x \$750.00 = \$ 750.00

Hearing Date: June 18, 2002 1 session

Total Forum Fees = \$3,000.00

The Panel has assessed all of the forum fees jointly and severally against IA, Watkins, and Maczka.

Fee Summary

1. Diglio be and hereby is solely liable for:

| | |
|---------------------------|--------------|
| <u>Initial Filing Fee</u> | = \$ 125.00 |
| Total Fees | = \$ 125.00 |
| <u>Less payments</u> | = \$1,200.00 |
| Refund Due Diglio | = \$1,075.00 |

As stated in the "Award" section above, IA, Watkins, and Maczka be and hereby are jointly and severally liable and shall reimburse Diglio for the \$125.00 filing fee.

2. IA be and hereby is solely liable for:

| | |
|---|--------------|
| Initial Filing Fee | = \$1,000.00 |
| <u>Member Fees</u> | = \$3,500.00 |
| Total Fees | = \$4,500.00 |
| <u>Less payments</u> | = \$1,750.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$2,750.00 |

3. IA, Watkins, and Maczka be and hereby are jointly and severally liable for:

| | |
|--|--------------|
| <u>Forum Fees</u> | = \$3,000.00 |
| <u>Total Fees</u> | = \$3,000.00 |
| <u>Less payments</u> | = \$ 0.00 |
| <u>Balance Due NASD Dispute Resolution, Inc.</u> | = \$3,000.00 |

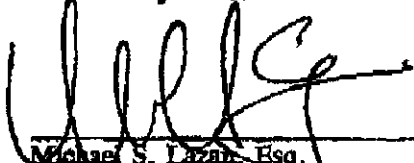
All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

| | | |
|------------------------|---|------------------------------------|
| Michael S. Lazan, Esq. | - | Public Arbitrator, Presiding Chair |
| Sandra D. Parker, Esq. | - | Public Arbitrator |
| Steven J. Alperin | - | 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.



Michael S. Lazan, Esq.
Public Arbitrator, Presiding Chair

7.30.02

Signature Date

Sandra D. Parker, Esq.
Public Arbitrator

Signature Date

Steven J. Alperin
Industry Arbitrator

Signature Date

July 29, 2002

Date of Service (For NASD office use only)

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Michael S. Lazan, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Sandra D. Parker, Esq.
Public Arbitrator

7/02/03

Signature Date

Steven J. Alperin
Industry Arbitrator

Signature Date

July 29, 2002

Date of Service (For NASD office use only)

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Michael S. Lazan, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Sandra D. Parker, Esq.
Public Arbitrator

Signature Date



Steven J. Alperin
Industry Arbitrator



Signature Date

July 29, 2002
Date of Service (For NASD office use only)