

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

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In the Matter of the Arbitration Between:

TimeCapital Securities Corporation, (Claimant) vs. First Albany Corporation, (Respondent)

Case Number: 01-00050

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

TimeCapital Securities Corporation, hereinafter referred to as "Claimant": Milton R. Gleit, Esq., McCarthy, Fingar, Donovan, Drazen & Smith, LLP, White Plains, NY.

Respondent, First Albany Corporation, hereinafter referred to as "Respondent": Irwin Weltz, Esq., Brunelle & Hadjikow, PC, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: January 3, 2001.

Claimant signed the Uniform Submission Agreement: December 29, 2000.

Amended Statement of Claim and Reply to Counterclaim filed on or about: March 30, 2001.

Claimant's Opposition to Respondent's Motion to Dismiss filed on or about: November 2, 2001.

Motion to Dismiss, Statement of Answer and Counterclaim filed by Respondent on or about: March 21, 2001.

Respondent signed the Uniform Submission Agreement: February 2, 2001.

Answer and Response to Claimant's Amended Statement of Claim filed by Respondent on or about: May 18, 2001.

Respondent's Memorandum of Law in Further Support of Motion to Dismiss filed on or about: November 29, 2001.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; failure to pay to Claimant finder's fees pursuant to a written agreement, as compensation for assisting Respondent in developing a relationship with a client for whom Respondent performed underwriting services.

Unless specifically admitted in its Answer and Motion to Dismiss, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; Claim barred by applicable Statute of Limitations; the claim is barred by the Statute of Frauds; and the claim is barred by the doctrines of waiver, estoppel, unclean hands, no condition precedent, no consideration, mitigation of damages, laches and assumption of the risk.

Respondent asserted the following Counterclaim: the claims presented are malicious, frivolous, and without merit and violate NASD Conduct Rule 2110.

Unless specifically admitted in its Reply to Respondent's Counterclaim, Claimant denied the allegation made in the Counterclaim and asserted that the claim for relief is supported by the facts.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$156,787.50 for breach of agreement or such other amount as may be proved at the hearing, plus interest from March 28, 2000, attorney's fees and costs associated with these proceedings, and such other relief as the panel deems proper.

Respondent requested that the panel grant Respondent's Motion to Dismiss and deny all relief sought by Claimant, with prejudice, award all costs associated with these proceedings, including attorney's fees, award damages on Respondent's Counterclaim as determined by the Panel, and such other relief as the panel deems proper.

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

At the hearing, Respondent reasserted its Motion for dismissal of the case. After due deliberation and having received the parties' written submissions, the Panel determined to dismiss this case with prejudice.

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 in addition to the parties' April 8 & 9, 2002 submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent's Motion to Dismiss is granted;
2. Claimants claims are dismissed in their entirety; and,
3. 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	= \$ 1,000.00
Counterclaim filing fee	= \$ 500.00

#### **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. In this matter, TimeCapital Securities Corporation and First Albany Corporation are both parties.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,500.00

### **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:

One (1) Pre-hearing session with a single arbitrator x \$ 450.00 = \$ 450.00  
Pre-hearing conference: April 1, 2002 1 session

One (1) Pre-hearing session with Panel x \$ 1,125.00 = \$ 1,125.00  
Pre-hearing conference: October 3, 2001 1 session

Two (2) Hearing sessions x \$ 1,125.00 = \$ 2,250.00

Hearing conferences: April 4, 2002 2 sessions

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Total Forum Fees = \$ 3,825.00

1. The Panel has assessed \$1,912.50 of the forum fees against the Claimant.
2. The Panel has assessed \$1,912.50 of the forum fees against the Respondent.

### **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. First Albany, requested copies of awards. Total cost \$70.00

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 4,600.00
Administrative Fees	= \$ 70.00
<u>Forum Fees</u>	<u>= \$ 1,912.50</u>
Total Fees	= \$ 7,582.50
<u>Less payments</u>	<u>= \$ 6,725.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 857.50

2. Respondent be and hereby is solely liable for:

Filing Fee	= \$ 500.00
Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	<u>= \$ 1,912.50</u>
Total Fees	= \$ 7,012.50
<u>Less payments</u>	<u>= \$ 6,170.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 842.50

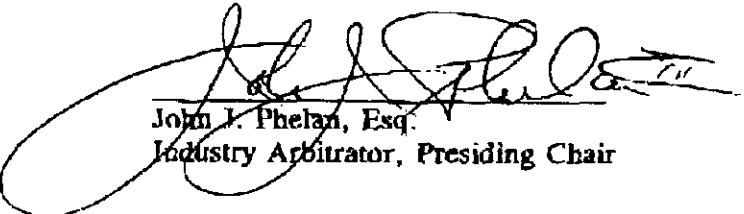
All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

John J. Phelan, Esq.	-	Industry Arbitrator, Presiding Chair
David W. Haynes	-	Industry Arbitrator
Dean E. Kois	-	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.

  
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John J. Phelan, Esq.  
Industry Arbitrator, Presiding Chair

5/24/02  
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Signature Date

\_\_\_\_\_  
David W. Haynes  
Industry Arbitrator

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

\_\_\_\_\_  
Dean E. Kois  
Industry Arbitrator

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

May 23, 2002  
\_\_\_\_\_  
Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.  
Arbitration No. 01--00050  
Award Page 7

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John J. Phelan, Esq.  
Industry Arbitrator, Presiding Chair

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Signature Date


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David W. Haynes  
Industry Arbitrator

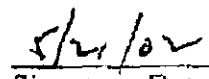
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Signature Date

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Dean E. Kojs  
Industry Arbitrator

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Signature Date

May 23, 2002

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