

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Douglas W. Hester, (Claimant) vs. McDonald Investments, Inc. and Keycorp Company,
(Respondents)

Case Number: 01-00163

Hearing Site: Cleveland, Ohio

REPRESENTATION OF PARTIES

Claimant Douglas W. Hester, hereinafter referred to as "Claimant": Jeffrey M. Embleton, Esq.,
Mansour, Gavin, Gerlack & Manos Co., LPA, Cleveland, OH.

Respondent McDonald Investments, Inc. ("McDonald"): Matthew J. Morelli, Esq., Ulmer &
Berne LLP, Cleveland, OH.

Respondent Keycorp Company ("Keycorp"), did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: January 8, 2001.

Claimant signed the Uniform Submission Agreement: January 4, 2001.

Statement of Answer filed by McDonald on or about: March 23, 2001.

McDonald signed the Uniform Submission Agreement: March 23, 2001.

Keycorp did not file a Statement of Answer or sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; breach of implied contract; breach of promise under the doctrine of promissory estoppel; and rescission of patent assignment based upon fraud, coercion, and duress.

Unless specifically admitted in its Answer, McDonald denied the allegations made in the Statement of Claim and asserted the following defenses: there is no legal, factual, or logical support for Claimant's claims; Claimant's entitlement to commissions ceased upon his termination; the assignment of the patent in question was the result of good faith negotiations between Claimant and McDonald; and there is no evidence of fraud by McDonald.

RELIEF REQUESTED

Claimant requested:

- a. Compensatory damages in the amount of \$10,000,000.00;

- b. Rescission of the assignment of patent rights to the computer program in question; and
- c. Expenses and attorneys' fees or such other relief as the Panel may determine is appropriate in this matter.

McDonald requested that judgement be entered in its favor and against Claimant, that it be awarded its attorneys' fees and costs, and that all forum costs be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

Keycorp was not a member of NASD, Inc. or an associated person during the period of time in dispute, and declined to voluntarily submit to the jurisdiction of NASD Dispute Resolution in this matter.

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. McDonald be and hereby is liable for and shall pay to Claimant the sum of \$406,392.00 as compensatory damages, plus interest at the rate of 10% accruing from February 1, 2000 until the date of payment.
- 2. The Assignment of Patent applied for on September 9, 1999 is hereby ordered null and void. McDonald is hereby awarded "shop rights" to the Patent.
- 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 = \$ 600.00

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, McDonald Investments, Inc. is a party.

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|-------------------------|---------------|
| Member surcharge | = \$ 3,000.00 |
| Pre-hearing process fee | = \$ 600.00 |
| Hearing process fee | = \$ 5,000.00 |

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 Panel x \$1,200.00 = \$ 1,200.00

Pre-hearing conference: June 29, 2001 1 session

Twenty-three (23) Hearing sessions x \$1,200.00 = \$27,600.00

| | | |
|----------------|----------------|------------|
| Hearing Dates: | April 15, 2002 | 2 sessions |
| | April 16, 2002 | 2 sessions |
| | April 17, 2002 | 2 sessions |
| | April 18, 2002 | 2 sessions |
| | April 30, 2002 | 2 sessions |
| | May 1, 2002 | 3 sessions |
| | May 2, 2002 | 2 sessions |
| | May 3, 2002 | 2 sessions |
| | June 3, 2002 | 2 sessions |
| | June 4, 2002 | 2 sessions |
| | June 5, 2002 | 2 sessions |

Total Forum Fees = \$28,800.00

The Panel has assessed all of the forum fees against McDonald.

Fee Summary

1. Claimant be and hereby is solely liable for:

| | |
|----------------------------|---------------|
| <u>Initial Filing Fee</u> | = \$ 600.00 |
| <u>Total Fees</u> | = \$ 600.00 |
| <u>Less payments</u> | = \$ 1,800.00 |
| <u>Refund Due Claimant</u> | = \$ 1,200.00 |

2. McDonald be and hereby is solely liable for:

| | |
|--|---------------|
| <u>Member Fees</u> | = \$ 8,600.00 |
| <u>Forum Fees</u> | = \$28,800.00 |
| <u>Total Fees</u> | = \$37,400.00 |
| <u>Less payments</u> | = \$ 8,600.00 |
| <u>Balance Due NASD Dispute Resolution, Inc.</u> | = \$28,800.00 |

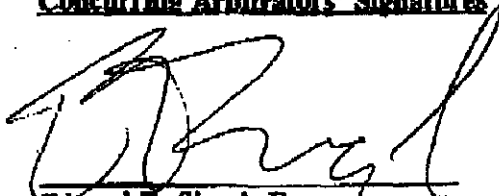
All balances are due and payable to NASD Dispute Resolution, Inc.

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ARBITRATION PANEL

| | | |
|--------------------------|---|------------------------------------|
| Edward F. Siegel, Esq. | - | Public Arbitrator, Presiding Chair |
| Frank C. Fogl, Jr., Esq. | - | Public Arbitrator |
| Richard A. Scalfani | - | Industry Arbitrator |

Concurring Arbitrators' Signatures


Edward F. Siegel, Esq.
Public Arbitrator, Presiding Chair

7/10/02
Signature Date

Frank C. Fogl, Jr., Esq.
Public Arbitrator

Signature Date

Richard A. Scalfani
Industry Arbitrator

Signature Date

July 11, 2002
Date of Service (For NASD office use only)

ARBITRATION PANEL

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Public Arbitrator, Presiding Chair

Frank C. Fogl, Jr., Esq.

Public Arbitrator

Richard A. Scalfani

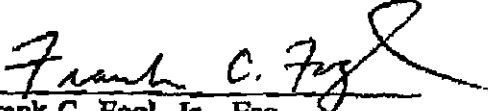
Industry Arbitrator

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Public Arbitrator, Presiding Chair

Signature Date

Frank C. Fogl, Jr., Esq.
Public Arbitrator

Signature Date

Richard A. Scalfani

Richard A. Scalfani
Industry Arbitrator

July 9, 2002

Signature Date

July 11, 2002

Date of Service (For NASD office use only)