

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

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In the Matter of the Arbitration Between:

Merit Capital Associates, Inc., (Claimant) vs. Jonathan R. Lake, (Respondent)

Case Number: 01-00706

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Merit Capital Associates, Inc., hereinafter referred to as "Claimant": Robert Fitzpatrick, Esq., General Counsel, Merit Capital Associates, Westport, CT.

Respondent, Jonathan R. Lake, hereinafter referred to as "Respondent": Scott D. Stechman, Esq., Lehman & Eilen LLP, Uniondale, NY. Respondent originally appeared *pro se*.

**CASE INFORMATION**

Statement of Claim filed on or about: February 7, 2001.

Response to Counterclaim filed by Claimant on or about: September 13, 2001.

Claimant signed the Uniform Submission Agreement: February 7, 2001.

Statement of Answer filed by Respondent on or about: May 2, 2001.

Amended Statement of Answer and Counterclaim filed by Respondent on or about: August 31, 2001.

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

**CASE SUMMARY**

Claimant asserted the following cause of action: breach of promissory note.

Unless specifically admitted in his Answer and Amended Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; Claimant's claims are barred by its unclean hands; and by virtue of its bad faith conduct, Claimant should be estopped from recovering its claims against Respondent.

In his Counterclaim, Respondent asserted the following causes of action: defamation on Form U-5 and conversion of property.



Unless specifically admitted in its Answer, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: each and every statement made on Respondent's Form U-5 is true; Respondent's former attorney was sent a draft of the Form U-5 in question one full month before it was filed; Claimant has already agreed to allow Respondent to remove any and all of his personal property; Respondent has refused to return repeated phone calls and has refused to participate in any discussions regarding the return of his property; and Respondent has filed this Counterclaim as a ploy to keep from paying a valid debt.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$78,330.34, plus reasonable attorneys' fees.

In his Amended Answer and Counterclaim, Respondent requested an Award:

- a. Dismissing the Statement of Claim in its entirety, with prejudice;
- b. Awarding Respondent compensatory damages on his Counterclaim for defamation, in an amount to be determined at the hearing;
- c. Directing Claimant to file an Amended Form U-5 for Respondent in which the false "yes" answer to Question 15 therein is changed to "no";
- d. Directing that all references to the false and defamatory Form U-5 filing be expunged from Respondent's CRD record;
- e. Directing Claimant to immediately return to Respondent all of his furniture, equipment, and other personal property at Claimant's sole cost and expense;
- f. Awarding Respondent compensatory damages on his Counterclaim for conversion, in an amount to be determined at the hearings, for any economic loss in value to Respondent's personal property;
- g. Awarding Respondent punitive damages in an amount sufficient to punish Claimant for its wrongful conduct and to deter such conduct in the future;
- h. Awarding Respondent his fees, costs, and disbursements, including reasonable attorneys' fees, incurred in connection with this proceeding; and
- i. Granting such other and further relief as the Panel deems just and appropriate.

In its Answer, Claimant requested that the Counterclaim be dismissed, and that Respondent be assessed the entire cost of these proceedings.



### **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.

### **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. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$70,000.00 as compensatory damages, plus interest at the rate of 9% accruing from November 16, 2000 until date of payment.
2. Claimant is hereby ordered to deliver to Respondent, at a place of Respondent's choosing, all property listed in the Itemized List of Assets submitted by Respondent as his Exhibit # 2 at the hearings. Claimant is hereby ordered to make said delivery, at its own expense, within 30 days of the date of this Award.
3. All requests for punitive damages are hereby denied.
4. The Panel recommends the expungement of the Amended Form U-5 dated January 18, 2001 from Respondent's registration records maintained by NASD Central Registration Depository ("CRD"), as such filing should not have been made and is defamatory in nature. The original Form U-5, dated November 17, 2000, which answered Question #15 as "no" shall stand as the proper filing.
5. 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	= \$ 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, Merit Capital Associates, Inc. is a party.

Member surcharge	= \$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:

One (1) Pre-hearing session with Panel x \$1,000.00	= \$1,000.00
Pre-hearing conference: August 21, 2001	1 session
Three (3) Hearing sessions x \$1,000.00	= \$3,000.00
Hearing Dates: December 4, 2001	2 sessions
December 5, 2001	1 session
Total Forum Fees	= \$4,000.00

1. The Panel has assessed \$2,000.00 of the forum fees against Claimant.
2. The Panel has assessed \$2,000.00 of the forum fees against Respondent.

### **Fee Summary**

1. Claimant be and hereby is solely liable for:	
Initial Filing Fee	= \$1,000.00
Member Fees	= \$3,100.00
<u>Forum Fees</u>	= <u>\$2,000.00</u>
Total Fees	= \$6,100.00
<u>Less payments</u>	= <u>\$2,750.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,350.00



2. Respondent be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 250.00
<u>Forum Fees</u>	<u>= \$2,000.00</u>
Total Fees	= \$2,250.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,250.00

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

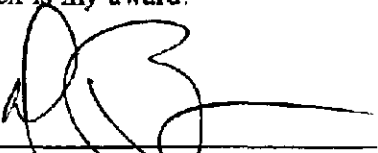


**ARBITRATION PANEL**

Dennis M. Pape, Esq.	-	Industry Arbitrator, Presiding Chair
Garrett J. Dombrowski, Esq.	-	Industry Arbitrator
Jerome H. Levy	-	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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Dennis M. Pape, Esq.  
Industry Arbitrator, Presiding Chair

12/21/01  
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Signature Date

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Garrett J. Dombrowski, Esq.  
Industry Arbitrator

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

\_\_\_\_\_  
Jerome H. Levy  
Industry Arbitrator

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

January 3, 2002  
\_\_\_\_\_  
Date of Service (For NASD office use only)



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Dennis M. Pape, Esq.	-	Industry Arbitrator, Presiding Chair
Garrett J. Dombrowski, Esq.	-	Industry Arbitrator
Jerome H. Levy	-	Industry Arbitrator

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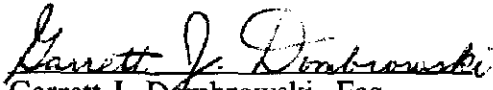
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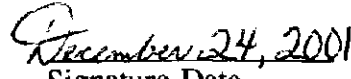
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Dennis M. Pape, Esq.  
Industry Arbitrator, Presiding Chair

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Signature Date

  
Garrett J. Dombrowski, Esq.  
Industry Arbitrator

  
Signature Date

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Jerome H. Levy  
Industry Arbitrator

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Signature Date

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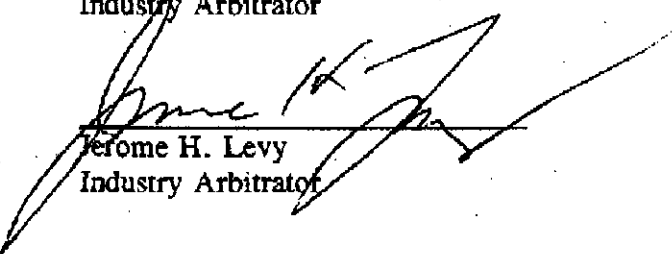
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Industry Arbitrator, Presiding Chair

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Signature Date

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Garrett J. Dombrowski, Esq.  
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