

---

**Award  
NASD**

---

In the Matter of the Arbitration Between:

Name of Claimant  
Joseph P. Mauer

Case Number: 01-01013

Name of Respondent  
Mutual Trust Co. of America Securities

Hearing Site: Tampa, Florida

---

**REPRESENTATION OF PARTIES**

For Joseph P. Mauer ("Claimant"): Scott C. Ilgenfritz, Esq., Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A., Tampa, Florida. On or about June 20, 2002, Scott C. Ilgenfritz withdrew. Thereafter, Claimant appeared pro se.

For Mutual Trust Co. of America Securities ("Respondent"): William J. Schifino, Jr., Esq., Brenda M. Combs, Esq. and Shane B. Vogt, Esq., Williams Schifino Mangione & Steady, P.A., Tampa, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: February 26, 2001.

Claimant signed the Uniform Submission Agreement on: February 23, 2001.

Motion to Dismiss, Statement of Answer and Affirmative Defenses and Counterclaim filed by Respondent on or about: May 22, 2001.

Respondent signed the Uniform Submission Agreement on: May 23, 2001.

Statement of Answer to Counterclaim filed by Claimant on or about: July 17, 2001.

Motion to Enforce Settlement, Motion for Order of Expungement and Motion for Attorneys' Fees and Costs against Claimant filed by Respondent on or about: August 27, 2002.

Request for Extension of Time to Respond to Motion to Enforce Settlement, filed by Claimant on or about: September 9, 2002.

Opposition to Claimant's Request for Extension of Time to Respond to Motion to Enforce Settlement, filed by Respondent on or about: September 10, 2002.

Supplement to Its Motion to Enforce Settlement, Motion for Order of Expungement and Motion for Attorneys' Fees and Costs filed by Respondent on or about: October 22, 2002.

### **CASE SUMMARY**

Claimant sued Respondent for libel (defamation) and tortious interference relating to the reason for discharge and statements relating thereto as reported by Respondent on Claimant's initial Form U-5.

Respondent denied Claimant's allegations, set forth defenses thereto and filed a counterclaim against Claimant for contractual indemnity and breach of contract relating to an employment agreement.

### **RELIEF REQUESTED**

Claimant requested in his Statement of Claim: 1) an order that requires Respondent to immediately notify NASD in writing that Claimant's previously filed Form U-5 is false, that Claimant was not discharged from his affiliation with Respondent, and that the reasons provided by Respondent on Claimant's Form U-5 for Claimant's "discharge" were also false; 2) an order requiring Respondent to immediately file with NASD a corrected Form U-5 for Claimant indicating that the termination of Claimant's affiliation with Respondent was voluntary; 3) compensatory damages between \$50,000.01 and \$100,000.00; 4) interest; 5) costs; and 6) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondent requested in its Statement of Answer and Counterclaim: 1) dismissal of the Statement of Claim; 2) unspecified compensatory damages; 3) interest; 4) costs; 5) attorneys' fees; and 6) such other relief the Panel deemed just and proper.

Respondent requested in its Supplement to Motion to Enforce Settlement, Motion for Order of Expungement and Motion for Attorneys' Fees and Costs: 1) an order enforcing the parties' settlement stipulation by (a) ordering Claimant to pay Respondent \$12,500.00, plus \$562.50 in interest at the Florida statutory rate of 9% for six months, within five calendar days of the order, with failure to do so resulting in suspension of Claimant's securities' licenses and ability to conduct investment-related business, including the selling of insurance products, and (b) entering a certain stipulated award for expungement; 2) directing NASD Central Registration Depository ("CRD") to expunge all reference from the above-captioned arbitration proceeding from the parties' respective CRD records; 3) awarding Respondent fees and costs in the amount of \$2,750.00 against Claimant caused by his failure to fulfill his obligations under the parties' settlement stipulation; and 4) ordering Claimant to pay outstanding fees owed to the law firm of Harris Barrett Mann & Dew, LLP.

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

The parties mediated, and settled, the issues presented in their respective claims and counterclaims as of April 19, 2002. As part of the settlement relating to Claimant's claims, Respondent agreed that Claimant's Form U-5 should be amended to reflect that the termination of his registration with Respondent was "voluntary" and that all references to Claimant's alleged failure to pay fees related to his termination or customer arbitrations should be deleted from Claimant's Form U-5. As part of the settlement relating to Respondent's counterclaims, Claimant agreed to pay Respondent \$12,500.00. As part of settlement, the parties further agreed that any references to the above-styled arbitration should be expunged from the parties' respective NASD CRD records. The above is collectively referred to as the "Settlement".

In August 2002, Respondent filed its Motion to Enforce the Settlement, Motion for Order of Expungement, and Motion for Attorneys' Fees and Costs. On or about October 30, 2002, the Panel conducted a pre-hearing conference on the motion. After hearing argument of Claimant, pro se, and Brenda Combs, Esq., counsel for Respondent, the Panel ordered as follows on November 4, 2002:

- 1) Respondent's motion is granted;
- 2) Within ten (10) days after the parties' receipt of the Panel's Order, Respondent shall submit an Award, which Award shall provide:
  - (a) within ten (10) days after service of the Award, Claimant shall pay the sum of \$2,750.00 payable to the law firm of Williams Schifino Mangione & Steady, PA as compensation for fees and costs incurred as a result of Claimant's failure to promptly fulfill his obligations under the terms of the Settlement Stipulation entered into on April 19, 2002, which monies may be accepted by the payee immediately upon receipt;
  - (b) within ten (10) days after service of the Award, Claimant shall pay by separate check the sum of \$12,500.00 payable to the Trust Account of Williams Schifino Mangione & Steady, PA, which sum shall be held IN TRUST and only disbursed pursuant to subparagraph (f) below;
  - (c) Claimant's Form U-5 filed by Respondent shall be amended to reflect the basis for termination as "voluntary", and the statements, "failure to pay fees associated with U-5 form filing and failure to pay fees on two arbitrations for which Joseph Mauer got the firm involved," shall be deleted from Claimant's Form U-5;
  - (d) all references to this arbitration shall be expunged from the CRD and publicly available records of Claimant (CRD #2258017) and Respondent (Firm CRD #8494);
  - (e) within ten (10) days after receipt of the monies referenced in subparagraphs (a) and (b) above, counsel for Respondent shall execute and deliver to NASD an Amended Form U-5 concerning the termination of Claimant's independent contractor relationship with Respondent, which Amended Form U-5 shall provide that Claimant's termination was voluntary;
  - (f) counsel for Respondent may disburse the sum of \$12,500.00 held in its Trust Account upon the parties' confirmation that Claimant's Form U-5 has been modified as required above; and
  - (g) the costs of the pre-hearing conference shall be equally divided by the parties;
- 3) the Award shall be copied to Claimant concurrent with forwarding it to NASD for execution by the Panel; and
- 4) all other requests for relief sought by the parties in the pleadings are denied.

**AWARD**

Based upon the facts presented in the pleadings, motions and other papers filed in this case, and arguments presented at the hearing on October 30, 2002 and the order dated November 4, 2002 resulting from that hearing, and the authority of this Panel to order amendment/expungement in an industry controversy, it is hereby ordered that:

- (a) Within ten (10) days after service of the Award, Claimant shall pay the sum of \$2,750.00 payable to the law firm of Williams Schifino Mangione & Steady, PA as compensation for fees and costs incurred as a result of Claimant's failure to promptly fulfill his obligations under the terms of the Settlement Stipulation entered into on April 19, 2002, which monies may be accepted by the payee immediately upon receipt;
- (b) Within ten (10) days after service of the Award, Claimant shall pay by separate check the sum of \$12,500.00 payable to the Trust Account of Williams Schifino Mangione & Steady, PA, which sum shall be held IN TRUST and only disbursed pursuant to subparagraph (f) below;
- (c) Claimant's Form U-5 filed by Respondent shall be amended to reflect the basis for termination as "voluntary", and the statements, "failure to pay fees associated with U-5 form filing and failure to pay fees on two arbitrations for which Joseph Mauer got the firm involved," shall be deleted from Claimant's Form U-5;
- (d) all references to this arbitration shall be expunged from the CRD and publicly available records of Claimant (CRD #2258017) and Respondent (Firm CRD #8494);
- (e) within ten (10) days after receipt of the monies referenced in subparagraphs (a) and (b) above, counsel for Respondent shall execute and deliver to NASD an Amended Form U-5 concerning the termination of Claimant's independent contractor relationship with Respondent, which Amended Form U-5 shall provide that Claimant's termination was voluntary;
- (f) counsel for Respondent may disburse the sum of \$12,500.00 held in its Trust Account upon the parties' confirmation that Claimant's Form U-5 has been modified as required above; and
- (g) all other requests for relief sought by the parties in the pleadings are denied.

**FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

**Filing Fees**

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$225.00
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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent is a member firm and a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

On or about January 9, 2002, the parties jointly requested an adjournment of the evidentiary hearing scheduled for January 22-24, 2002. The Panel adjourned the evidentiary hearing and assessed the adjournment fee of \$750.00 as follows: \$375.00 to Claimant and \$375.00 to Respondent.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with Panel @ \$1,000.00	= \$2,000.00
Pre-hearing conferences: August 20, 2001 1 session	
October 30, 2002 1 session	

---

Total Forum Fees	= \$2,000.00
------------------	--------------

The Panel has assessed forum fees in the amount of \$1,000.00 to Claimant.  
The Panel has assessed forum fees in the amount of \$1,000.00 to Respondent.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Adjournment Fees	= \$ 375.00
Forum Fees	= \$1,000.00
Total Fees	= \$1,600.00
Less payments	= \$1,350.00
Balance Due NASD Dispute Resolution	= \$ 250.00

Respondent is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$3,600.00
Adjournment Fees	= \$ 375.00
Forum Fees	= \$1,000.00
Total Fees	= \$5,475.00
Less payments	= \$5,475.00
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are payable to NASD and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

<i>Eric E. Ludin, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Arthur L. Tepper, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Chester Barry White, PhD</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/  
Eric E. Ludin, Esq.  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
November 26, 2002  
Signature Date

\_\_\_\_\_/s/  
Arthur L. Tepper, Esq.  
Public Arbitrator

\_\_\_\_\_  
November 26, 2002  
Signature Date

\_\_\_\_\_/s/  
Chester Barry White  
Non-Public Arbitrator

\_\_\_\_\_  
November 26, 2002  
Signature Date

\_\_\_\_\_  
November 26, 2002  
Date of Service (For NASD use only)

NASD

Arbitration No. 01-01013

Award Page 6 of 6

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Adjournment Fees	= \$ 375.00
<u>Forum Fees</u>	<u>= \$1,000.00</u>
Total Fees	= \$1,600.00
<u>Less payments</u>	<u>= \$1,350.00</u>
Balance Due NASD Dispute Resolution	= \$ 250.00

Respondent is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$3,600.00
Adjournment Fees	= \$ 375.00
<u>Forum Fees</u>	<u>= \$1,000.00</u>
Total Fees	= \$5,475.00
<u>Less payments</u>	<u>= \$5,475.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are payable to NASD and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Eric E. Ludin, Esq.

Arthur L. Tepper, Esq.

Chester Barry White, PhD

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Eric E. Ludin, Esq.

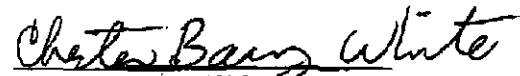
Public Arbitrator, Presiding Chairperson

Signature Date

Arthur L. Tepper, Esq.

Public Arbitrator

Signature Date



Chester Barry White

Non-Public Arbitrator

11/27/02  
Signature Date

Date of Service (For NASD use only)

NASD

Arbitration No. 01-01013

Award Page 6 of 6

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Adjournment Fees	= \$ 375.00
<u>Forum Fees</u>	= \$1,000.00
Total Fees	= \$1,600.00
<u>Less payments</u>	= \$1,350.00
Balance Due NASD Dispute Resolution	= \$ 250.00

Respondent is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$3,600.00
Adjournment Fees	= \$ 375.00
<u>Forum Fees</u>	= \$1,000.00
Total Fees	= \$5,475.00
<u>Less payments</u>	= \$5,475.00
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are payable to NASD and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Eric E. Ludin, Esq.


Arthur L. Tepper, Esq.

Chester Barry White, PhD

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Eric E. Ludin, Esq.

Public Arbitrator, Presiding Chairperson

11/27/02  
Signature Date

Arthur L. Tepper, Esq.

Public Arbitrator

Signature Date

Chester Barry White

Non-Public Arbitrator

Signature Date

Date of Service (For NASD use only)



NASD

Arbitration No. 01-01013

Award Page 6 of 6

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Adjournment Fees	= \$ 375.00
<u>Forum Fees</u>	<u>= \$1,000.00</u>
Total Fees	= \$1,600.00
<u>Less payments</u>	<u>= \$1,350.00</u>
Balance Due NASD Dispute Resolution	= \$ 250.00

Respondent is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$3,600.00
Adjournment Fees	= \$ 375.00
<u>Forum Fees</u>	<u>= \$1,000.00</u>
Total Fees	= \$5,475.00
<u>Less payments</u>	<u>= \$5,475.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are payable to NASD and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Eric E. Ludin, Esq.

Arthur L. Tepper, Esq.

Chester Barry White, PhD

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Eric E. Ludin, Esq.

Public Arbitrator, Presiding Chairperson

Signature Date

Arthur L. Tepper, Esq.

Public Arbitrator

Signature Date

Chester Barry White

Non-Public Arbitrator

Signature Date

Date of Service (For NASD use only)