

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Mont Tanner, Claimant v. Michael McGuire and ACAP Financial, Inc., Respondents

Case Number: 01-01222

Hearing Site: Las Vegas, Nevada

REPRESENTATION OF PARTIES

For Claimant:

Mont Tanner, Esq.
Law Offices of Mont Tanner
Las Vegas, Nevada

For Respondents:

Mark O. Van Wagoner, Esq.
Prince, Yeates & Geldzahler
Salt Lake City, Utah

CASE INFORMATION

Statement of Claim filed: March 6, 2001

Claimant's Uniform Submission Agreement signed: March 5, 2001

Joint Statement of Answer filed by Respondents: May 7, 2001

Respondents' Uniform Submission Agreements signed: Not signed

CASE SUMMARY

Claimant alleged breach of contract, breach of fiduciary duty, conversion, unjust enrichment, violation of NASD Conduct Rule 2120, and negligence in the purchase and sale of Trans-Global Holdings stock.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested compensatory damages of \$21,000.00, unspecified punitive damages, prejudgment interest, attorney's fees, and arbitration costs.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, attorney's fees, and arbitration costs.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Michael McGuire and ACAP Financial, Inc. did not file with the NASD Dispute Resolution properly executed submission agreements; however, all said Respondents are required to submit to arbitration and Respondents Michael McGuire and ACAP Financial, Inc., having answered the claim, appeared, and testified at the hearing, are bound by the determination of the Arbitrator on all issues submitted.

On September 18, 2002, Respondents Michael McGuire and ACAP Financial, Inc. requested that the Arbitrator postpone the hearing dates. On September 30, 2002, the Arbitrator granted the request.

Respondents Michael McGuire and ACAP Financial, Inc. submitted post-hearing motions for attorney's fees and arbitration costs.

The parties agreed that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, testimony, and evidence presented at the hearing, and the post-hearing submissions, the Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent ACAP Financial, Inc. is liable to and shall pay Claimant the sum of \$15,331.14 in compensatory damages.
- 2) Respondent ACAP Financial, Inc. is liable to and shall pay Claimant interest at the rate of 3% per annum simple interest on the sum of \$15,331.14 from March 15, 2000, until the date payment of this Award is made in full.
- 3) Claimant's request for punitive damages is denied.
- 4) Respondent Michael McGuire is dismissed with prejudice.
- 5) Respondents' request for attorney's fees is denied and parties shall bear their respective costs.
- 6) All other relief requested and not expressly granted is denied.

FEEs

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$125.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm ACAP Financial, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$400.00
Total Member Fees	= \$400.00

Adjournment Fees

The following adjournment fees are assessed:

October 3, 2002, adjournment requested by Respondents Michael McGuire and ACAP Financial, Inc.	= WAIVED
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Forum Fees and Assessments

The Arbitrator assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Arbitrator. The following fees are assessed:

Four (4) Pre-hearing conference sessions with arbitrator @ \$ 450.00/session	= \$ 1,800.00
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Pre-hearing conferences:	September 24, 2001	1 session
	June 10, 2002	1 session
	June 18, 2002	1 session
	September 30, 2002	1 session

Two (2) Hearing sessions @ \$450.00/session	= \$ 900.00
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Hearing:	October 18, 2002	2 sessions
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Total Forum Fees	= \$ 2,700.00
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1. The Arbitrator assessed \$1,800.00 of the forum fees to Respondent ACAP Financial, Inc.

2. The Arbitrator waived the \$450.00 forum fee associated with the June 10, 2002 pre-hearing conference.
3. The Western Regional Director of NASD Dispute Resolution waived the \$450.00 forum fee associated with the September 30, 2002 pre-hearing conference.

Fee Summary

1. Claimant, Mont Tanner, is charged with the following fees and costs:

<u>Initial Filing Fee</u>	= \$ 125.00
Total Fees	= \$ 125.00
Funds applied to outstanding Mediation Fees	= \$ 250.00
<u>Less payments</u>	= \$ (575.00)
Refund Due Claimant	= \$ (200.00)

2. Respondent, ACAP Financial, Inc., is charged with the following fees and costs:

Member Fees	= \$ 400.00
<u>Forum Fees</u>	= \$ 1,800.00
Total Fees	= \$ 2,200.00
<u>Less payments</u>	= \$ (400.00)
Balance Due NASD Dispute Resolution	= \$ 1,800.00

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

ARBITRATOR

Andrew S. Brignone, Esq.

Public, Presiding Arbitrator

Arbitrator's signature



ANDREW S. BRIGNONE, ESQ.
Public, Presiding Arbitrator

1/23/03

SIGNATURE DATE

1/24/03

Date of Service