

**Award  
NASD**

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In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 01-01499

Scott Alan Rubin

Names of the Respondents

Hearing Site: Boca Raton, Florida

Roundhill Securities, Inc. and John  
Britt

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**REPRESENTATION OF PARTIES**

For Scott Alan Rubin, hereinafter referred to as "Claimant": Gerald Rubin, Esq., Law Offices of Gerald Rubin, P.C., Newark, New Jersey.

For Roundhill Securities, Inc. ("Roundhill"): William Zeena, Jr., Esq., Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, Miami, Florida.

Respondent John Britt ("Britt") appeared pro se.

**CASE INFORMATION**

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

Claimant signed the Uniform Submission Agreement: April 9, 2001.

Answer, Affirmative Defenses and Crossclaim filed by Respondent Roundhill on or about: June 27, 2001.

Respondent Roundhill signed the Uniform Submission Agreement: July 10, 2001.

Statement of Answer filed by Respondent Britt on or about: July 1, 2001.

Answer to Crossclaim and "Crossclaim" Against Scott Alan Rubin filed by Respondent Britt on or about: October 29, 2001.

Motion to Bar Respondent Britt from Filing an Answer filed by Claimant on or about: August 14, 2001.

Respondent Britt signed the Uniform Submission Agreement: May 20, 2001.

Motion to Dismiss "Crossclaim" Against Scott Alan Rubin filed by Claimant on or about: December 13, 2001.

Motion to Dismiss the Statement of Claim filed by Respondent Britt on or about: December 16, 2001.

Supplemental Motion to Dismiss the Statement of Claim filed by Respondent Britt on or about: February 21, 2002.

Renewal of Motion to Dismiss "Crossclaim" Against Scott Alan Rubin filed by Claimant on or about: March 29, 2002.

Response to Motion to Dismiss "Crossclaim" Against Scott Alan Rubin and Renewed Motion to Dismiss Statement of Claim filed by Respondent Britt on or about: April 23, 2002.

Motion to Bar Respondent Britt from Offering into Evidence, any Documents or Facts which Respondent Should Have Delivered to Claimant in Accordance With Request for Discovery filed by Claimant on or about: July 18, 2002.

Motion to Bar Evidence from J & H Enterprise, Inc. filed by Claimant on or about: July 25, 2002.

Response to Motion to Bar Respondent Britt from Offering into Evidence, any Documents or Facts which Respondent Should Have Delivered to Claimant in Accordance With Request for Discovery filed by Respondent Britt on or about: September 20, 2002.

### **CASE SUMMARY**

Claimant asserted a claim for breach of contract. The cause of action relates to the Independent Contractor Agreement dated February 1, 1999 (the "Agreement"), and Addendum thereto, entered into by Claimant, Respondent Roundhill and Respondent Britt.

Unless specifically admitted in its Answer, Respondent Roundhill denied the allegations made in the Statement of Claim, asserted various defenses and asserted a claim for indemnification in its crossclaim.

Unless specifically admitted in his Answer, Respondent Britt denied the allegations made in the Statement of Claim and Crossclaim and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$11,400.00; any additional commissions, compensation or claims due and payable to Claimant pursuant to the Agreement; attorney's fees; an unspecified amount of punitive damages; interest; and, any other relief deemed just and proper.

Respondent Roundhill requested judgment dismissing Claimant's claims, plus costs and disbursements relating to this proceeding, attorney's fees pursuant to Section 57.105 of the Florida Statutes and Paragraph 8.4 of the Agreement, together with any other relief deemed just and proper. In addition, Respondent Roundhill requested indemnification from Respondent Britt as asserted in its crossclaim.

Respondent Britt requested judgment dismissing Claimant's claims and Respondent Roundhill's crossclaims.

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

On or about October 29, 2001, Respondent Britt filed a "crossclaim" against Scott Alan Rubin on behalf of J & H Enterprise, Inc. ("J & H").

On or about January 7, 2002, Claimant notified the NASD that his claims against Respondent Roundhill were settled and withdrawn, with prejudice.

On or about January 7, 2002, Respondent Roundhill notified the NASD that its crossclaims against Respondent Britt were voluntarily dismissed, with prejudice.

On or about January 24, 2002, the Arbitrator issued an order which deferred ruling on Claimant's Motion to Dismiss "Crossclaim" Against Scott Alan Rubin. Further, said order directed Respondent Britt to provide the following documentation within twenty (20) days of receipt of the order: written authorization from J & H that he is the legal representative acting on its behalf and information detailing the relationships between Claimant and J & H, Respondent Britt and J & H and Respondent Roundhill and J & H. Thereafter, on or about February 21, 2002, Respondent Britt submitted the Articles of Incorporation for J & H.

On about April 17, 2002, the Arbitrator issued an order, sua sponte, which stated that the evidentiary hearing scheduled to commence on May 6, 2002 was canceled. Further, said order stated that a pre-hearing conference would be conducted on May 6, 2002. On or about April 18, 2002, Claimant filed a response to said order and stated that he did not object to the cancellation of the May 6, 2002 evidentiary hearing. On or about April 23, 2002, Respondent Britt filed an objection to the cancellation of the May 6, 2002 evidentiary hearing. During the pre-hearing conference on May 6, 2002, the Arbitrator issued a verbal order which rescheduled the evidentiary hearing in this matter to November 18, 2002.

On or about May 8, 2002, the Arbitrator issued an order which again deferred ruling on Claimant's Motions to Dismiss "Crossclaim" Against Scott Alan Rubin and denied Respondent Britt's Motions to Dismiss the Statement of Claim.

On or about October 8, 2002, the Arbitrator issued an order which stated that the "crossclaim" by J & H was not properly filed and as such, said "crossclaim" would not be considered. Therefore, the Arbitrator made no determinations with respect to any claims by J & H. Further, said order denied Claimant's Motion to Bar Respondent Britt from Offering into Evidence any Documents or Facts which Respondent Should Have Delivered to Claimant in Accordance With Request for Discovery and Claimant's Motion to Bar Evidence from J & H Enterprise, Inc.

On or about November 6, 2002, Respondent Britt filed a motion for postponement of the evidentiary hearing scheduled to commence on November 18, 2002. As grounds for the postponement, Respondent stated that his witness was unavailable for the evidentiary hearing scheduled to commence on November 18, 2002. Claimant objected to same. At the commencement of the evidentiary hearing on November 18, 2002, the Arbitrator noted that, although Respondent's motion was dated November 6, 2002, it was postmarked in Hawaii on November 12, 2002 and was not received by the NASD in Florida until Friday, November 15, 2002. The submission was not read by NASD staff until Monday morning, November 18, 2002, the day of the evidentiary hearing. The Respondent's motion was not seen by the Arbitrator until November 18, 2002 at approximately 9:45 AM, 15 minutes after the evidentiary hearing was to have commenced. As such, the Arbitrator determined that Respondent's motion for postponement was not timely filed. In that regard, the Arbitrator issued a verbal order which denied Respondent Britt's request for postponement.

Respondent Britt did not appear at the evidentiary hearing on November 18, 2002. Upon review of the file and the representations made on behalf of the Claimant, the Arbitrator determined that Respondent Britt has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

On or about December 23, 2002, the Arbitrator issued a verbal order which declared Claimant's Motion to Bar Respondent Britt from Filing an Answer moot. Furthermore, the Arbitrator declared that Respondent Britt's Statement of Answer was deemed filed as of July 1, 2001.

### **AWARD**

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

Respondent Britt is found liable to Claimant on the claim for breach of contract and shall pay to Claimant compensatory damages in the amount of \$6,425.37.

Respondent Britt is liable and shall pay to Claimant attorney's fees in the amount of \$2,000.00 pursuant to the provisions of the Independent Contractor Agreement dated February 1, 1999, and Addendum thereto, entered into by Claimant, Respondent Roundhill and Respondent Britt.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

### **FEES**

Pursuant to 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 | = \$125.00 |
| Crossclaim filing fee    | = \$750.00 |

#### **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 persons at the time of the event giving rise to the dispute. In this matter, the member firm is a party.

|                  |            |
|------------------|------------|
| Member surcharge | = \$400.00 |
|------------------|------------|

#### **Adjournment Fees**

No requests for adjournment were granted in this matter.

### **Injunctive Relief Fees**

No injunctive relief fees were incurred in this matter.

### **Forum Fees and Assessments**

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

|  |              |
|--|--------------|
| Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 | = \$900.00   |
| Pre-hearing conferences:      October 22, 2001                   | 1 session    |
| May 6, 2002  | 1 session    |
| One (1) Hearing session @ \$450.00                               | = \$450.00   |
| Hearing Date:                      November 18, 2002             | 1 session    |
| <hr/>  |              |
| Total Forum Fees   | = \$1,350.00 |

The Arbitrator has assessed the total forum fees of \$1,350.00 to Respondent Britt.

### **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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

### **FEE SUMMARY**

Claimant is solely liable for:

|                    |            |
|--------------------|------------|
| Initial Filing Fee | = \$125.00 |
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| Total Fees | = \$125.00 |
|------------|------------|

|               |            |
|---------------|------------|
| Less payments | = \$125.00 |
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|------------------|----------|
| Balance Due NASD | = \$0.00 |
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Respondent Roundhill is solely liable for:

|                       |            |
|-----------------------|------------|
| Crossclaim Filing Fee | = \$750.00 |
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|             |            |
|-------------|------------|
| Member Fees | = \$400.00 |
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| Total Fees | = \$1,150.00 |
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|---------------|------------|
| Less payments | = \$400.00 |
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|------------------|------------|
| Balance Due NASD | = \$750.00 |
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Respondent Britt is solely liable for:

Forum Fees = \$1,350.00

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Total Fees = \$1,350.00

Less payments = \$0.00

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Balance Due NASD = \$1,350.00

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

**ARBITRATOR**

Ronald F. Rohe

- Non-Public Arbitrator, Presiding Chair

**Arbitrator's Signature**

/s/

12/26/02

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Ronald F. Rohe  
Non-Public Arbitrator, Presiding Chair

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Signature Date

12/26/02

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Date of Service (For NASD office use only)

Date of Service (For NASD office use only)