

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Jeremy Dallow, (Claimant) vs. May, Davis Group, Inc., (Respondent)

Case Number: 01-01511

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Jeremy Dallow, hereinafter referred to as "Claimant": Lawrence S. Leibowitz, Esq., Wexler & Burkhart, P.C., Mitchel Field, NY.

Respondent, May, Davis Group, Inc., hereinafter referred to as "Respondent": Adam L. Goldberg, Esq., The Law Offices of Adam L. Goldberg, Brooklyn, NY.

CASE INFORMATION

Statement of Claim filed on or about: March 22, 2001.

Reply to Counterclaim filed by Claimant on or about: June 1, 2001.

Claimant signed the Uniform Submission Agreement: March 19, 2001.

Statement of Answer and Counterclaim filed by Respondent on or about: May 21, 2001.

Respondent signed the Uniform Submission Agreement: May 21, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: unpaid commissions; breach of contract; *and violation of New York Labor Law.*

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant fails to state a claim upon which relief can be granted; Claimant has brought this claim against Respondent without presenting evidence that would establish this fact; the claims made in the Statement of Claim are barred by Claimant's assumption of risk; the claims made in the Statement of Claim are barred to the extent that Claimant failed to exercise due diligence and conduct his financial affairs reasonably and responsibly; any losses sustained by Claimant were proximately caused by his own conduct and negligence with respect to the transactions at issue in the Statement of Claim; and the claims in the Statement of Claim are barred because Respondents did not cause the damages allegedly suffered by Claimant.

In its Counterclaim, Respondent asserted the following cause of action: Respondent is entitled to any commissions paid to Claimant during the period that Claimant's registration was inactive.

Unless specifically admitted in his Reply, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: Respondent is estopped from obtaining any recovery upon its Counterclaim because it authorized and directed Claimant to continue to perform his duties as a registered representative with full knowledge of his registration status; Respondent has ratified all acts of Claimant upon which it seeks relief; Respondent is estopped from retaining any revenues generated by Claimant pursuant to the equitable doctrine of unclean hands; Respondent intentionally violated applicable NASD rules and cannot profit from those violations; in discharging his duties as a registered representative notwithstanding his apparent inactive registration status, Claimant acted in good faith and without knowledge that was solely in the possession of Respondent; and Respondent fails to state a claim upon which relief can be granted.

RELIEF REQUESTED

Claimant requested:

- a. On the first cause of action, compensatory damages in the amount of \$48,833.81, with interest thereon from the date originally due;
- b. On the second cause of action, compensatory damages in the amount of \$61,042.26, plus attorneys' fees in an amount to be proven at the hearing, with interest thereon from the date originally due; and
- c. Such other and further relief as the Panel deems just and proper under the circumstances including, without limitation, attorneys' fees, filing fees, and disbursements herein.

Respondent requested that the Panel dismiss the Statement of Claim in its entirety and award Respondent such costs and fees as the Panel deems just and proper, including attorneys' fees and the costs of this arbitration.

In its Counterclaim, Respondent requested unspecified damages representing any commissions paid to Claimant during the period that Claimant's registration was inactive.

In his Reply, Claimant requested that the Counterclaim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearing in this matter, Respondent made a Motion to Dismiss which was denied by the Panel.

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 \$48,833.81 as compensatory damages, plus interest in the amount of \$8,332.00 (calculated at the rate of 9% per annum).
2. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$300.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution, Inc.
3. Respondent's Counterclaim is hereby dismissed in its entirety.
4. 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	= \$ 300.00
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. In this matter, May, Davis Group, Inc. is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Adjournment Fees

Adjournments requested during these proceedings:

Feb. 25 & 26, 2002, adjournment by Claimant	= \$1,125.00
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The Panel has assessed the adjournment fee against Respondent.

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:

Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$2,250.00
Pre-hearing conferences: October 25, 2001 1 session	
February 5, 2002 1 session	

Two (2) Hearing sessions x \$1,125.00	= \$2,250.00
Hearing Date: June 7, 2002 2 sessions	
Total Forum Fees	= \$4,500.00

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

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$ 1,750.00
Refund Due Claimant	= \$ 1,450.00

As stated in the "Award" section above, Respondent is liable and shall reimburse Claimant for the \$300.00 filing fee.

2. Respondent be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$ 4,600.00
Adjournment Fee	= \$ 1,125.00
Forum Fees	= \$ 4,500.00
<u>Total Fees</u>	= \$10,725.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$10,725.00

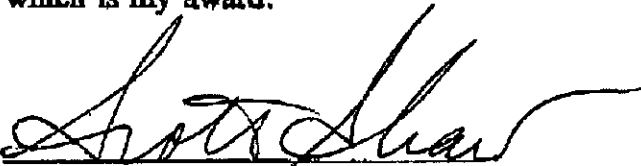
All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Scott K. Shaw	-	Industry Arbitrator, Presiding Chair
Jonathan Frede	-	Industry Arbitrator
Jeffrey Bega	-	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.



Scott K. Shaw
Industry Arbitrator, Presiding Chair

6/21/02

Signature Date

Jonathan Frede
Industry Arbitrator

Signature Date

Jeffrey Bega
Industry Arbitrator

Signature Date

June 26, 2002

Date of Service (For NASD office use only)

ARBITRATION PANEL

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Jonathan Frede	-	Industry Arbitrator
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Industry Arbitrator, Presiding Chair

Signature Date



Jonathan Frede
Industry Arbitrator

6/20/2002

Signature Date

Jeffrey Bega
Industry Arbitrator

Signature Date

June 26, 2002
Date of Service (For NASD office use only)

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Scott K. Shaw
Industry Arbitrator, Presiding Chair

Signature Date

Jonathan Frede
Industry Arbitrator

Signature Date



Jeffrey Bega
Industry Arbitrator



Signature Date

June 26, 2002
Date of Service (For NASD office use only)