

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

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In the Matter of the Arbitration Between:

Douglas Saulnier, (Claimant) vs. Kethe Cicconi and Mercer Partners Corporation, (Respondents)

Case Number: 01-01588

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant Douglas Saulnier, hereinafter referred to as "Claimant": David Dretzin, Esq., Anderson, Kill & Olick, P.C., New York, NY.

Respondent Kethe Cicconi ("Cicconi"): Martin P. Unger, Esq., Blank Rome Tenzer Greenblatt LLP, New York, NY.

Respondent Mercer Partners Corporation ("Mercer"), did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: March 28, 2001.

Claimant signed the Uniform Submission Agreement: April 23, 2001.

Statement of Answer filed by Cicconi on or about: June 15, 2001.

Cicconi signed the Uniform Submission Agreement: June 11, 2001.

Mercer did not file a Statement of Answer or sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: unpaid commissions; improper tax reporting; and violation of the parties' agreement.

Unless specifically admitted in his Answer, Cicconi denied the allegations made in the Statement of Claim and asserted the following defenses: the alleged agreement is void and unenforceable under the applicable Statute of Frauds and the Statement of Claim fails to state a claim upon which relief may be granted.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$75,000.00, plus punitive

damages in the amount of \$25,000.00, legal interest accruing from September 1, 1999, costs, and attorneys' fees.

Cicconi requested that this arbitration be dismissed as to him, with prejudice; that the costs of this arbitration be assessed against Claimant; and such other relief as the Panel deems fit.

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

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Mercer 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 Mercer present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Mercer did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

Arbitrator Neil Gargiulo was unable to attend the hearing sessions conducted on March 21, 2002. All parties present at the hearing consented to the hearing proceeding with the remaining two arbitrators and for arbitrator Neil Gargiulo to listen to the audio tapes for those sessions. After arbitrator Neil Gargiulo had an opportunity to listen to the audio tapes, the Panel deliberated.

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. Respondents Cicconi and Mercer be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$75,000.00 as compensatory damages plus interest at the rate of 9% per annum from September 1, 1999 until the date the award is paid in full.
2. All other requests for relief are hereby denied.

### **FEEES**

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 = \$ 225.00

### **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, Mercer Partners Corporation is a party.

Member surcharge = \$1,000.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

Feb. 5, 6 & 13, 2002, adjournment by Claimant

The panel determined to assess the cost associated with  
this adjournment against Respondents, jointly and severally = \$ 750.00

### **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 a single arbitrator x \$450.00 = \$ 450.00  
Pre-hearing conference: February 5, 2002 1 session

One (1) Pre-hearing session with Panel x \$750.00 = \$ 750.00  
Pre-hearing conference: November 12, 2001 1 session

Four (4) Hearing sessions x \$750.00 = \$3,000.00  
Hearing Dates: March 20, 2002 2 sessions  
March 21, 2002 2 sessions

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Total Forum Fees = \$4,200.00

1. The Panel has assessed \$1,875.00 of the forum fees against Claimant, Douglas Saulnier.
2. The Panel has assessed \$2,325.00 of the forum fees jointly and severally against Respondents Cicconi and Mercer.

### **Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$1,875.00</u>
Total Fees	= \$2,100.00
<u>Less payments</u>	<u>= \$1,725.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 375.00

2. Mercer be and hereby is solely liable for:

<u>Member Fees</u>	<u>= \$1,000.00</u>
Total Fees	= \$1,000.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,000.00

3. Mercer and Cicconi be and hereby are jointly and severally liable for:

Adjournment Fee	= \$ 750.00
<u>Forum Fees</u>	<u>= \$2,325.00</u>
Total Fees	= \$3,075.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution Inc.	= \$3,075.00

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

**ARBITRATION PANEL**

James V. Gargan, Sr., Esq.	-	Industry Arbitrator, Presiding Chair
Neil G. Gargiulo	-	Industry Arbitrator
Joel G. Soren	-	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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James V. Gargan, Sr., Esq.  
Industry Arbitrator, Presiding Chair

5/1/02  
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Signature Date

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Neil G. Gargiulo  
Industry Arbitrator

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

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Joel G. Soren  
Industry Arbitrator

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

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

**ARBITRATION PANEL**

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Signature Date

  
\_\_\_\_\_  
Neil G. Gargiulo  
Industry Arbitrator

5-2-02  
\_\_\_\_\_  
Signature Date

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Industry Arbitrator

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