

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Berry-Shino Securities, Inc., (Claimant) vs. George Munch and David Monaco, (Respondents)

Case Number: 01-01611

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Berry-Shino Securities, Inc., hereinafter referred to as "Claimant": R. Matthew Shino, President, Berry-Shino Securities, Inc, Phoenix, AZ. Previously represented by: Michael S. Colombo, StreetWide Asset Recovery Group, Inc., New York, NY, M. David Sayid, Esq., Sayid and Associates LLP, New York, NY, and Louis F. Burke, Esq., Louis F. Burke, P.C., New York, NY, respectively.

Respondent, George Munch ("Munch"): Christina M. Fry, Esq., Speiser, Krause, Nolan & Granito, New York, NY.

Respondent, David Monaco ("Monaco"), did not make an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: March 30, 2001.

Reply to Counterclaim filed by Claimant on or about: January 18, 2002.

Claimant signed the Uniform Submission Agreement: March 16, 2001.

Statement of Answer and Counterclaim filed by Munch on or about: November 30, 2001.

Munch signed the Uniform Submission Agreement: October 24, 2001.

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

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract (against Monaco); indemnification (against Munch); and fraud (against Monaco).

Unless specifically admitted in his Answer, Munch denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief may be granted; Claimant's alleged damages were caused in whole by the fault of Claimant and others over whom Munch had no control or authority and for which Munch is not legally responsible; Claimant is seeking double recovery since Claimant alleges damages that had been fully recouped under the Option Agreement between Claimant and Monaco; Munch is not liable to Claimant as Claimant made it impossible to conform to the contractual obligations of the parties; and Respondent Monaco has settled this dispute with Claimant thereby releasing all claims for damages against both Monaco and Munch.

In his Counterclaim, Munch asserted the following causes of action: false and incorrect statements made on Form U-5 and lost income.

Unless specifically admitted in its Reply, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: Munch's Counterclaim is totally frivolous and does not shed a scintilla of evidence as to what the basis is for the Counterclaim.

RELIEF REQUESTED

Claimant requested judgment:

- a. On the First Count against Monaco for breach of contract, for \$90,273.36, together with pre-judgment and post-judgment interest, attorneys' fees, and costs;
- b. On the Second Count against Munch for indemnification, for \$90,273.36, together with pre-judgment and post-judgment interest, attorneys' fees, and costs;
- c. On the Third Count against Monaco for fraud in violation of the N.Y. Debtor and Creditor Law, enjoining or setting aside any fraudulent conveyances by Monaco and/or any conveyances by Monaco in preference over Claimant, for attorneys' fees pursuant to N.Y. Debtor & Creditor Law section 276-a, and for punitive damages in an amount to be determined at trial; and
- d. Such other and further relief as may be just and equitable.

In his Answer, Munch requested judgment dismissing the Statement of Claim in its entirety or, alternatively, judgment limiting its liability, together with costs and disbursements of this action and such other and further relief which the Panel deems just and proper.

In his Counterclaim, Munch requested unspecified compensatory damages for lost income and damage to reputation, together with costs, interest, and attorneys' fees as determined appropriate by the Panel. Munch further requested reinstatement and expungement of the false information on his Form U-5.

In its Reply, Claimant requested that the Panel dismiss the Counterclaim and award Claimant its costs, fees, expenses, and reasonable attorneys' fees of \$2,500.00, along with such other and further relief as the Panel deems just.

OTHER ISSUES CONSIDERED AND DECIDED

By letter dated September 20, 2001 the Claimant settled its claims with Respondent Monaco.

During the hearings in this matter, Munch withdrew his counterclaim for lost income.

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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby dismissed in their entirety.
2. The Panel recommends the expungement of the Reason for Termination, and the corresponding explanation, stated on Respondent Munch's Form U-5 dated April 3, 2001, based on the defamatory nature of the information, and the expungement of all reference to the above-captioned arbitration from Respondent Munch's registration records maintained by the NASD Central Registration Depository ("CRD"). The Reason for Termination, which currently states "Discharged", should be replaced with "Voluntary".

3. The Panel also recommends the expungement to the "yes" answer to item #15 on Respondent Munch's Form U-5 dated April 3, 2001, to be replaced with a "no" answer, and the expungement of the corresponding Disclosure Reporting Page, based on the defamatory nature of the information.
4. Claimant is liable for and shall pay to Munch the sum of \$1,810.00 as costs.
5. Claimant is liable for and shall pay to Munch the sum of \$18,050.00 as attorneys' fees. The Panel awarded attorneys' fees pursuant to (i) the NASD Manual, (ii) decisions of the New York courts, and (iii) decisions of the Federal courts.
6. Claimant is liable for and shall pay to Munch the sum of \$250.00, to reimburse Munch for the Counterclaim filing fee previously paid to NASD Dispute Resolution.
7. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$1,000.00
Counterclaim filing fee	= \$250.00

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, Berry-Shino Securities, Inc. is a party.

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

Adjournment Fees

Adjournments requested during these proceedings:

Apr. 16 & 17, 2002, adjournment by Claimant and Munch	= \$ 562.50 each
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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 Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: November 14, 2001 1 session	
Five (5) Hearing sessions x \$1,125.00	= \$5,625.00
Hearing Dates: December 16, 2002 2 sessions	
December 17, 2002 2 sessions	
December 18, 2002 1 session	
Total Forum Fees	= \$6,750.00

1. The Panel has assessed all of the forum fees against Claimant.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 3,600.00
Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	<u>= \$ 6,750.00</u>
Total Fees	= \$11,912.50
<u>Less payments</u>	<u>= \$ 5,350.00</u>
Balance Due NASD Dispute Resolution	= \$ 6,562.50

2. Munch is solely liable for:

Counterclaim Filing Fee	= \$ 250.00
<u>Adjournment Fee</u>	<u>= \$ 562.50</u>
Total Fees	= \$ 812.50
<u>Less payments</u>	<u>= \$ 1,750.00</u>
Refund Due Munch	= \$ 937.50

As stated in the "Award" section above, Claimant is liable and shall reimburse Munch for the \$250.00 Counterclaim filing fee.


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

ARBITRATION PANEL

Richard W. Cutler, Esq.	-	Public Arbitrator, Presiding Chair
Mitchell S. Friedman, Esq.	-	Public Arbitrator
Michael T. Curley	-	Non-Public 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.



Richard W. Cutler, Esq.
Public Arbitrator, Presiding Chair

1/22/03
Signature Date

Mitchell S. Friedman, Esq.
Public Arbitrator

Signature Date

Michael T. Curley
Non-Public Arbitrator

Signature Date

February 10, 2003
Date of Service (For NASD Dispute Resolution use only)

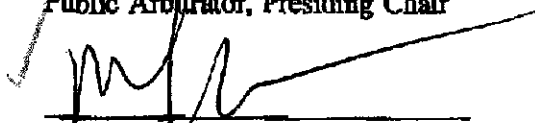
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Public Arbitrator

Signature Date

Michael T. Curley
* Michael T. Curley
Non-Public Arbitrator

1/30/2003
Signature Date

February 10, 2003

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