

**Award  
NASD**

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In the Matter of the Arbitration Between:

Jay C. Mallory, Claimant v. Sharpe Capital, Inc. and Daniel William Bustamonti, Respondents

Case Number: 01-01749

Hearing Site: Boca Raton, Florida

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**REPRESENTATION OF PARTIES**

For Jay C. Mallory, hereinafter referred to as "Claimant": Michael J. McCluskey, Esq., Warner, Fox, Wackeen, Dungey, Seeley, Sweet & Bear, L.L.P., Stuart, FL.

For Sharpe Capital, Inc. ("SCI") and Daniel William Bustamonti ("Bustamonti"), hereinafter referred to as "Respondents": Michael Simon, General Counsel, SCI, New York, NY. On or about April 29, 2002, Michael Simon withdrew as counsel for Respondent Bustamonti. Thereafter, Respondent Bustamonti appeared pro se.

**CASE INFORMATION**

Statement of Claim filed on or about: August 1, 2001.

Claimant's Uniform Submission Agreement signed: March 8, 2001.

Respondents' Answer filed on or about: July 18, 2001.

Respondent SCI's Uniform Submission Agreement signed: July 18, 2001.

Respondent Bustamonti's Uniform Submission Agreement signed: August 1, 2001.

**CASE SUMMARY**

Claimant alleged the following causes of action: 1) negligent misrepresentation; 2) violation of Section 517.301, Florida Statutes; 3) breach of contract; 4) breach of fiduciary duty; and 5) negligent supervision. The causes of action relate to Respondents' refusal to liquidate Claimant's SCI account.

Unless specifically admitted in their Statement of Answer, Respondents denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested in his Statement of Claim: 1) compensatory damages in an amount between \$25,000.00 and \$50,000.00; 2) interest; 3) costs; 4) attorneys' fees pursuant to Section 517.211, Florida Statutes; and 5) such other relief as the Arbitrator deemed just and proper.

Respondents requested: 1) dismissal of the Statement of Claim; 2) costs; and 3) such other relief as the Arbitrator deemed just and proper.

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

On or about December 26, 2001, Claimant informed NASD that he settled his claims against Respondent SCI.

On or about July 3, 2002, Claimant informed NASD that he settled his claims against all Respondents.

On or about November 14, 2002, Claimant filed with NASD, a Motion For Entry Of Final Award against Respondent Bustamonti and a proposed award. Respondent Bustamonti did not file a response to Claimant's motion. On December 18, 2002, the Arbitrator granted Claimant's motion.

On December 26, 2002, Respondent Bustamonti filed with NASD, a response to the Arbitrator's December 18, 2002 order, which asserted that he was making every effort to comply with the parties' settlement; he believed that the parties' settlement was somewhat flexible; that despite his recent economic hardship, he only defaulted on the first payment and timely made the next three months' payments; and that the Arbitrator should not grant the Motion For Entry Of Final Award.

On January 6, 2003, Claimant submitted a response which asserted that Respondent Bustamonti's response was an attempt to delay or avoid payment of the settlement; Respondent Bustamonti failed to make timely payments twice; Claimant sent Respondent Bustamonti a notice of default, to which he responded to only after the Arbitrator granted Claimant's Motion For Entry Of Final Award; and Respondent Bustamonti knew exactly what the settlement agreement terms were, what they meant, and what the ramifications were for non-payment.

On January 9, 2003, Respondent Bustamonti filed a reply wherein he agreed that he missed his first payment; stated that it was not his intent to default on his first payment; and asserted that he made timely payments for the subsequent four months.

On or about January 16, 2003, the Arbitrator issued an order that granted Claimant's Motion For Entry Of Final Award.

### **AWARD**

After considering the pleadings, Claimant's Motion For Entry Of Final Award, the proposed award, and all responses, replies, and the record in this matter, the Arbitrator has decided in full

and final resolution of the issues submitted for determination as follows:

- 1) Claimant is entitled to recover from Respondent Bustamonti \$11,250.00, less payments made in full.
- 2) Claimant is entitled to interest at the Florida statutory rate of 11% per annum from June 15, 2002 until satisfied.
- 3) Claimant is entitled to recover attorneys' fees and costs from Respondent Bustamonti in accordance with Chapter 517, Florida Statutes as determined by a court of competent jurisdiction.
- 4) Respondent Bustamonti shall pay to Claimant \$175.00, which represents reimbursement of the initial claim filing fee.

### **FEES**

Pursuant to the NASD Code of Arbitration (the "Code"), the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 175.00
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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. Respondent SCI is no longer a member firm of NASD. However, as Respondent SCI participated in this matter, the following fees are assessed:

Member Surcharge	= \$ 800.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 1,000.00
Total Member Fees	= \$ 2,400.00

#### **Adjournment Fees**

No adjournment fees are assessed.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the arbitrator.

Injunctive relief fees were not assessed in this matter.

**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 Chair/Arbitrator. The following fees are assessed:

Three (3) Pre-hearing conferences with the Arbitrator @ \$450.00	= \$	1,350.00
Pre-hearing conference: September 6, 2001 1 session		
February 15, 2002 1 session		
May 17, 2002 1 session		
Total Forum Fees	= \$	1,350.00

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

**Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for the following fees and costs:

Initial Filing Fee	= \$	175.00
Total Fees	= \$	175.00
Less payments	= \$	175.00
Balance Due NASD	= \$	0.00

Respondent Bustamonti is solely liable for the following fees and costs:

Forum Fees	= \$	1,350.00
Total Fees	= \$	1,350.00
Less payments	= \$	300.00
Balance Due NASD	= \$	1,050.00

Respondent SCI is solely liable for the following fees and costs:

Member Fees	= \$	2,400.00
Total Fees	= \$	2,400.00



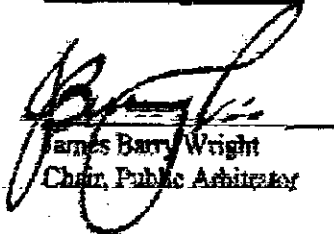
NASD

Arbitration No. 01-01749

Award Page 5 of 5

Less payments	= \$ 0.00
Balance Due NASD	= \$ 2,400.00

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

Arbitrator's Signature  
James Barry Wright  
Chair, Public Arbitrator1/24/03  
Signature DateDate of Service (For NASD office use only)