

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Fabio Pasquesi and Christopher Knutson, (Claimants) vs. Burlington Capital Markets, Inc.,
(Respondent)

Case Number: 01-01831

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimants, Fabio Pasquesi ("Pasquesi") and Christopher Knutson ("Knutson"), hereinafter collectively referred to as "Claimants": Neal Brickman, Esq., The Law Offices of Neal Brickman, New York, NY.

Respondent, Burlington Capital Markets, Inc., hereinafter referred to as "Respondent": James J. Binns, Esq., a sole practitioner, Philadelphia, PA. Previously represented by: Barry M. Bordetsky, Esq., Littman Krooks & Roth P.C., New York, NY and David K. Bergman, Esq., Frydman & Bergman, New York, NY, respectively.

CASE INFORMATION

Statement of Claim filed on or about: April 11, 2001.

Reply to Counterclaim filed by Claimants on or about: September 28, 2001.

Pasquesi signed the Uniform Submission Agreement: April 11, 2001.

Knutson signed the Uniform Submission Agreement: April 11, 2001.

Statement of Answer and Counterclaim filed by Respondent on or about: August 30, 2001.

Respondent signed the Uniform Submission Agreement: August 30, 2001.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract; improper termination; and unpaid salary and commissions.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants, not Respondent, breached the contract in dispute; Claimants' claims are barred due to Claimants' fraud in the inducement; the contracts in question were terminable at will; there was good cause to terminate Claimants; Claimants violated Respondent's company policy; and both Claimants found gainful employment soon after their departure from Respondent, and thus have successfully mitigated the vast majority of the damages they are now seeking.

In its Counterclaim, Respondent asserted the following causes of action: breach of promissory note (Pasquesi) and breach of fiduciary responsibility.

Unless specifically admitted in their Reply, Claimants denied the allegations made in the Counterclaim and asserted the following defenses: Claimants generated hundreds of thousands of dollars in commissions during their brief employment with Respondent, which easily paid for their salaries and still left Respondent with a large profit; Respondent's reference to matters that clearly have no conceivable connection with this action is a transparent attempt to embarrass Pasquesi and to deter him from pursuing this action; and any notion that Claimants would under any circumstances owe money to Respondent under the contract is nonsensical.

RELIEF REQUESTED

Claimants requested an Award as follows:

- a. To Pasquesi, the sum of \$570,000.00, representing the salary and commissions he would have earned in the 3 years and 3 months remaining under the contract;
- b. To Knutson, the sum of \$330,000.00, representing the salary and commissions he would have earned in the 3 years and 3 months remaining under the contract;
- c. To Pasquesi, the sum of \$50,000.00, or such other sum as would adequately compensate him for the value of the 67,500 shares of stock in Burlington in which he would have had a vested interest in at the end of his first year;
- d. To Knutson, the sum of \$25,000.00, or such other sum as would adequately compensate him for the value of the 37,500 shares of stock in Burlington in which he would have had a vested interest in at the end of his first year;
- e. To Pasquesi, a sum, to be determined by the Panel, that would adequately compensate him for the earnings he would have realized if Respondent had opened the credit line in his behalf as promised in the contract;
- f. To Knutson, a sum, to be determined by the Panel, that would adequately compensate him for the earnings he would have realized if Respondent had opened the credit line in his behalf as promised in the contract;
- g. A sum, to be determined by the Panel, that would adequately compensate Claimants for their lost benefits;
- h. Punitive damages, to be determined by the Panel;
- i. The costs and disbursements of this proceeding, including reasonable attorneys' fees; and
- j. Such other and further relief as the Panel may deem just and proper.

In its Answer and Counterclaim, Respondent requested that the Panel find in its favor against Claimants, that it award Claimants nothing, and that it award Respondent the following:

- a. Against Pasquesi, the sum of \$31,860.00, representing the amount of his promissory note and confession of judgement;
- b. Against Pasquesi, the sum of \$90,000.00, representing the salary wrongfully paid to him during the period that he was moonlighting and using Respondent's funds as his expenses to locate investors for another firm;
- c. Against Knutson, the sum of \$33,000.00, representing the salary wrongfully paid to him during the period that he was moonlighting and using Respondent's funds as his expenses to locate investors for another firm;
- d. Against both Claimants the costs and disbursements of this proceeding, including reasonable attorneys' fees; and
- e. Such other, further, and different relief as the Panel deems just and proper.

In their Reply, Claimants requested that the Panel find in their favor against Respondent, award Claimants the relief requested in their Statement of Claim, and deny all relief requested in Respondent's Answer and Counterclaim.

OTHER ISSUES CONSIDERED AND DECIDED

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 is liable for and shall pay to Pasquesi the sum of \$457,500.00 as compensatory damages.
2. Respondent is liable for and shall pay to Knutson the sum of \$183,750.00 as compensatory damages.
3. Claimants' request for punitive damages is hereby denied.
4. Respondent's Counterclaim is hereby dismissed in its entirety.
5. All other requests for relief are hereby denied.

FEEES

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	= \$ 375.00
Counterclaim filing fee	= \$ 1,000.00

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, Burlington Capital Markets, Inc. is a party.

Member surcharge	= \$ 2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 3,500.00

Adjournment Fees

Adjournments requested during these proceedings:

May 2, 3 & 8, 2002, adjournment by Respondent	= \$ 1,200.00
---	---------------

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:

Two (2) Pre-hearing sessions with Panel x \$1,200.00	= \$ 2,400.00
--	---------------

Pre-hearing conferences:	February 14, 2002	1 session
	April 10, 2002	1 session

Eighteen (18) Hearing sessions x \$1,200.00	= \$21,600.00
---	---------------

Hearing Dates:	June 19, 2002	2 sessions
	June 20, 2002	2 sessions
	August 27, 2002	2 sessions
	August 28, 2002	2 sessions
	November 21, 2002	2 sessions
	November 22, 2002	2 sessions

November 26, 2002	2 sessions	
December 12, 2002	2 sessions	
December 17, 2002	2 sessions	
Total Forum Fees		= \$24,000.00

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

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Respondent, requested tapes, \$330.00.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 2,450.00
Refund Due Claimants	= \$ 2,075.00

3. Respondent is solely liable for:

Counterclaim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 6,100.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$24,000.00
<u>Administrative Costs</u>	= \$ 330.00
Total Fees	= \$32,630.00
Less payments	= \$ 9,605.00
Balance Due NASD Dispute Resolution	= \$23,025.00

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

ARBITRATION PANEL

Herbert R. Behrens	-	Non-Public Arbitrator, Presiding Chair
Joseph Kosinsky, MBA	-	Non-Public Arbitrator
Michael Ross	-	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.



Herbert R. Behrens
Non-Public Arbitrator, Presiding Chair

Jan 7, 2003
Signature Date

Joseph Kosinsky, MBA
Non-Public Arbitrator

Signature Date

Michael Ross
Non-Public Arbitrator

Signature Date

January 16, 2003
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

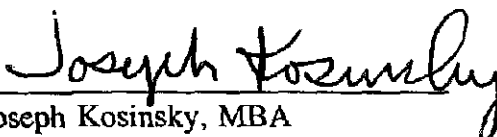
Herbert R. Behrens	-	Non-Public Arbitrator, Presiding Chair
Joseph Kosinsky, MBA	-	Non-Public Arbitrator
Michael Ross	-	Non-Public Arbitrator

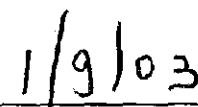
Concurring Arbitrators' Signatures

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.

Herbert R. Behrens
Non-Public Arbitrator, Presiding Chair

Signature Date


Joseph Kosinsky, MBA
Non-Public Arbitrator


Signature Date

Michael Ross
Non-Public Arbitrator

Signature Date

January 16, 2003
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Herbert R. Behrens	-	Non-Public Arbitrator, Presiding Chair
Joseph Kosinsky, MBA	-	Non-Public Arbitrator
Michael Ross	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

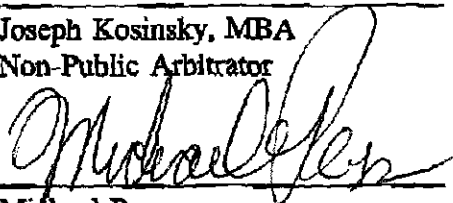
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Herbert R. Behrens
Non-Public Arbitrator, Presiding Chair

Signature Date

Joseph Kosinsky, MBA
Non-Public Arbitrator

Signature Date



Michael Ross
Non-Public Arbitrator

1-13-03
Signature Date

January 16, 2003
Date of Service (For NASD Dispute Resolution use only)