

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Richard Brown

Case Number: 01-02124

Name of the Respondent  
Clive Botha

Hearing Site: Chicago, Illinois

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**REPRESENTATION OF PARTIES**

Claimant Richard Brown ("Brown") was represented by Ernest E. Badway, Esq. of the firm Saiber Schlesinger Satz & Goldstein, LLC.

Respondent Clive Botha ("Botha") appeared *pro se*.

**CASE INFORMATION**

Statement of Claim filed on or about: April 27, 2001.

Amended Statement of Claim filed on or about: June 06, 2001.

Claimant Brown signed the Uniform Submission Agreement: April 20, 2001.

Claimant's Notice for Default Award, or, in the Alternative to Exclude Evidence at the Hearing filed on or about: September 19, 2002.

Claimant's Notice to Dismiss Respondent's Defense/Answer and Enter an Award for Claimant filed on or about: November 01, 2002.

**CASE SUMMARY**

Claimants Brown asserted the following causes of action: Breach of Contract; Breach of Implied Covenant of Good Faith and Fair Dealing; and Conversion. The causes of action relate to Botha's debit balance on his account.

**RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$49,000.00
(Reduced to \$5,000.00 in Amended SOC)	
Punitive Damages	unspecified
Interest	pre and post-award interest
Attorney's Fees	\$ 3,942.50
Other Costs	\$ 920.00
Other Monetary/Non-Monetary Relief if any:	any relief the panel deems just and fair

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

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned Arbitrator determined that Respondent 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 said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Clive Botha 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 Arbitrator on all issues submitted.

By agreement of the parties and the panel's leave, the hearing in this matter was held telephonically. Respondent Clive Botha only participated in the October 01, 2002 telephonic hearing.

In an order dated October 01, 2002, the Arbitrator denied Claimant's Notice for Default Award, or, in the Alternative to Exclude Evidence at the Hearing.

In an order dated January 09, 2003, the Arbitrator denied Claimant's Notice to Dismiss Respondent's Defense/Answer and Enter an Award for Claimant.

### **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 Clive Botha is solely liable for and shall pay to Claimant Richard Brown the sum of \$5,000.00 as compensatory damages.
2. Respondent Clive Botha is solely liable for and shall pay to Claimant Richard Brown the sum of \$1,000.00 as punitive damages. After review of the pleadings and arguments the Arbitrator finds sufficient authority for awarding punitive damages.
3. Respondent Clive Botha is solely liable for and shall pay to Claimant Richard Brown the sum of \$3,942.50 as attorney's fees. After review of the pleadings and arguments the Arbitrator finds sufficient authority for awarding attorney's fees.
4. Respondent Clive Botha is solely liable for and shall pay to Claimant Richard Brown the sum of \$920.00 as costs. After review of the pleadings and arguments the Arbitrator finds sufficient authority for awarding costs.
5. Except as specified herein, parties shall bear their own costs.
6. Any and all relief not specifically addressed herein is 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 = \$175.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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 sessions with a single arbitrator at \$450.00 = \$ 450.00

Pre-hearing conferences: July 18, 2002 1 session

Three (3) Hearing sessions at \$450.00 = \$1,350.00

Hearing Dates: August 28, 2002 1 session

October 01, 2002 1 session

January 22, 2003 1 session

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Total Forum Fees = \$1,800.00

The Panel has assessed \$1,800.00 of the forum fees to Clive Botha.

**FEE SUMMARY**

1. Claimant Richard Brown is solely liable for:

Initial Filing Fee = \$ 175.00

Total Fees = \$ 175.00

Less payments = \$ 175.00

Balance Due NASD Dispute Resolution, Inc. = \$ 0.00

2. Respondent Clive Botha is solely liable for:

Forum Fees = \$1,800.00

Total Fees = \$1,800.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution, Inc. = \$1,800.00

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

**ARBITRATION PANEL**

Thomas S. Wallace

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Public Arbitrator, Presiding Chairperson

NASD Dispute Resolution, Inc.

Arbitration No. 01-02124

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**Arbitrator's Signature**

/s/ Thomas S. Wallace

02/21/03

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Thomas S. Wallace

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Signature Date

Public Arbitrator, Presiding Chairperson

02/21/03

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Date of Service (For NASD Dispute Resolution office use only)

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**Arbitrator's Signature**

Thomas S. Wallace

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**Public Arbitrator, Presiding Chairperson**

02-21-03

**Signature Date**

Date of Service (For NASD Dispute Resolution office use only)