

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

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In the Matter of the Arbitration Between:

Neil A. Laufer, (Claimant) vs. Stires and Company and Sidney H. Stires, (Respondents)

Case Number: 01-02255

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Neil A. Laufer, hereinafter referred to as "Claimant", appeared *pro se*.

Respondents, Stires and Company ("S&C") and Sidney H. Stires ("Stires"), hereinafter collectively referred to as "Respondents": Peter A. Perlman, Esq., Beldock Levine & Hoffman LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: May 2, 2001.

Reply to Counterclaim and Motion to Dismiss filed by Claimant on or about: August 16, 2001.

Claimant signed the Uniform Submission Agreement.

Statement of Answer, Motion to Dismiss, and Counterclaim filed by Respondents on or about: August 2, 2001.

S&C did not sign a Uniform Submission Agreement.

Stires did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract and unpaid commissions.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant has failed to state a cause of action against Respondents with respect to the additional commissions in dispute; Claimant has failed to alleged the existence of a valid contract that he is entitled to the additional commissions in dispute; Claimant did not reasonably rely to his detriment upon any representation or action made by Respondents; Claimant's claims are barred by the doctrine of *in pari delicto*; and Claimant's claims are barred because they are, in part, based on a forged document.

In their Counterclaim, Respondents asserted the following causes of action; common law fraud and forgery.

Unless specifically admitted in his Reply, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: Respondents' Counterclaim makes dishonest, inflammatory, and reckless allegations against Claimant; a review of the original document in question will corroborate Claimant's allegations and conclusively demonstrate the unethical manner in which Respondents attempt to avoid their obligations to Claimant by asserting knowingly false statements; and Respondents' counsel failed to take any steps to verify the accuracy or otherwise of his legally insufficient and intellectually dishonest arguments by seeking to verify the authenticity of the document he claims is a forgery.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$34,106.61, plus costs in the amount of \$625.00.

In their Answer and Counterclaim, Respondents requested that the Panel enter an Award:

- a. Dismissing the claims against Respondents;
- b. Awarding Respondents reasonable attorneys' fees and costs;
- c. Granting Respondents' Counterclaim for fraud against Claimant and awarding Respondents their attorney and all other associated fees with respect to their Counterclaim; and
- d. Granting such other, different, and further relief as the Arbitrator shall deem just and appropriate.

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

By letter dated February 15, 2002, Respondents advised NASD Dispute Resolution, Inc. that they were withdrawing their Counterclaim. Respondents also advised that they were withdrawing the Fifth Defense asserted in their Statement of Answer, which stated "Claimant's claims are barred because they are, in part, based on a forged document".

S&C and Stires did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Arbitrator on all issues submitted.

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 Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. S&C be and hereby is solely liable for and shall pay to Claimant the sum of \$34,106.61 as compensatory damages, plus interest at the rate of 9% per annum accruing from December 31, 2000 until paid.
2. All claims against Stires are hereby dismissed.
3. S&C be and hereby is solely liable for and shall pay to Claimant the sum of \$175.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution, Inc.
4. All other requests for relief are hereby denied in their entirety.

### **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
Counterclaim filing fee	= \$ 500.00

#### **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, Stires and Company is a party.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,000.00

### **Forum Fees and Assessments**

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator	x \$450.00	= \$ 900.00
Pre-hearing conference:	December 10, 2001	1 session
	April 10, 2002	1 session
Two (2) Hearing sessions	x \$450.00	= \$ 900.00
Hearing Date:	March 5, 2002	2 sessions
Total Forum Fees		= \$1,800.00

The Arbitrator has assessed all of the forum fees against S&C.

### **Fee Summary**

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 175.00
<u>Total Fees</u>	= \$ 175.00
<u>Less payments</u>	= \$ 625.00
Refund Due Claimant	= \$ 450.00

*As stated in the "Award" section above, S&C is solely liable and shall reimburse Claimant for the \$175.00 filing fee.*

2. S&C be and hereby is solely liable for:

Member Fees	= \$3,400.00
<u>Forum Fees</u>	= \$1,800.00
<u>Total Fees</u>	= \$5,200.00
<u>Less payments</u>	= \$2,828.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,372.00

3. Respondents be and hereby are jointly and severally liable for:

<u>Counterclaim Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 500.00

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

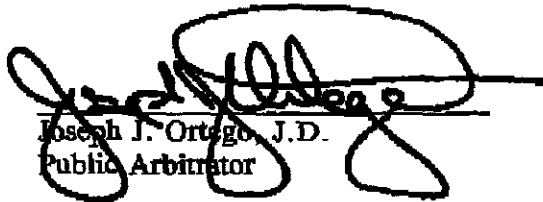
**ARBITRATION PANEL**

Joseph J. Ortego, J.D.

Public Arbitrator

**Arbitrator's Signature**

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.



Joseph J. Ortego, J.D.  
Public Arbitrator

4/25/02  
Signature Date

April 29, 2002

Date of Service (For NASD office use only)