

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Karin DeGraffenreid, (Claimant) vs. DebtTraders, Inc., (Respondent)

Case Number: 01-03149

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Karin DeGraffenreid, hereinafter referred to as "Claimant": Scott Moss, Esq., Outten & Golden LLP, New York, NY.

Respondent, DebtTraders, Inc., hereinafter referred to as "Respondent": Ann L. Moscow, Esq., Epstein Becker & Green, P.C., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: June 13, 2001.

Claimant signed the Uniform Submission Agreement: June 4, 2001.

Statement of Answer filed by Respondent on or about: August 14, 2001.

Respondent signed the Uniform Submission Agreement: August 1, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract and withheld wages under New York Labor Law Article 6.

Unless specifically admitted in its Answer, Respondent 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; to be eligible for any form of compensation, Claimant had to be employed by Respondent at the time such compensation was to be paid; Respondent did not breach any contract with Claimant; the additional compensation sought by Claimant herein does not constitute wages within the meaning of New York Labor Law section 190 et seq.; and Respondent's failure to pay additional compensation was not willful within the meaning of New York Labor Law section 190 et seq.

RELIEF REQUESTED

Claimant requested:

- a. Unpaid compensation in the amount of \$103,750.00, plus pre-judgment interest;
- b. Twenty-five percent of the unpaid compensation as liquidated damages;
- c. Recovery of her attorneys' fees and costs; and
- d. Such other and further relief as the Panel shall deem just and proper.

Respondent requested that Claimant's Statement of Claim be denied.

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.

PANEL'S REPORT

Claimant and Respondent negotiated an employment agreement providing for a compensation package that approximated the total compensation from Claimant's previous employer. The package totaled \$268,750.00 and provided for an annual salary of \$140,000.00, a signing bonus of \$25,000.00, a 2000 bonus of \$53,750.00 payable in January 2001, plus two additional payments: \$20,000.00 in April 2001 and \$30,000.00 in August 2001 (the anniversary of Claimant's employment). Claimant started her employment in August 2000, but by mid-December, 4.5 months later - shortly before she left for a planned vacation and shortly before the \$53,750.00 January bonus was due - was fired.

In the employment agreement Respondent provided that receipt of the remaining elements of the compensation package were contingent upon Claimant's continued full-time employment by Respondent. Essentially, Claimant believed this meant that if she resigned she would forfeit the balance of her unpaid compensation package. That a bonus was due on the anniversary of Claimant's employment could reasonably imply that this was a one year commitment by both parties. Respondent, on the other hand, holds that Claimant could be terminated at will and, as that result, any unpaid elements of the compensation package were not obligated to be paid by Respondent.

We find that the employment agreement as a compensation package was consistent with industry practice, and based on Respondent's testimony, its maneuver was an attempt to renegotiate the agreement shortly before a \$53,750.00 bonus payment was due. Respondent was perfectly willing to continue Claimant's employment but only at her base annual salary of \$140,000.00.

Accordingly, we find for Claimant and award her \$103,750.00, plus interest of \$15,826.00 (through November 30, 2002), plus the 25% penalty of \$25,938.00 due under New York State Labor Law, plus her attorneys' fees of \$41,000.00.

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. Respondent is liable for and shall pay to Claimant the sum of \$103,750.00 as compensatory damages, plus interest in the amount of \$15,826 (through November 30, 2002).
2. Respondent is liable for and shall pay to Claimant the sum of \$25,938.00 as the 25% penalty due under New York State Labor Law.
3. Respondent is liable for and shall pay to Claimant the sum of \$41,000.00 as attorneys' fees. The Panel awarded attorneys' fees pursuant to New York Labor Law section 198(1-a), as argued in the Statement of Claim.
4. Respondent is liable for and shall pay to Claimant the sum of \$300.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.
5. 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	= \$ 300.00
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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, DebtTraders, Inc. is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Adjournment Fees

Adjournments requested during these proceedings:

Oct. 8, 9 & 10, 2002, adjournment by Respondent = \$1,125.00

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:

One (1) Pre-hearing session with Panel x \$1,125.00 = \$1,125.00

Pre-hearing conference: May 2, 2002 1 session

Five (5) Hearing sessions x \$1,125.00 = \$5,625.00

Hearing Dates: November 12, 2002 2 sessions

November 13, 2002 3 sessions

Total Forum Fees = \$6,750.00

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

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee = \$ 300.00

Total Fees = \$ 300.00

Less payments = \$ 1,425.00

Refund Due Claimant = \$ 1,125.00

As stated in the "Award" section above, Respondent is liable and shall reimburse Claimant for the \$300.00 filing fee.

2. Respondent is solely liable for:

Member Fees	= \$ 4,600.00
Adjournment Fee	= \$ 1,125.00
<u>Forum Fees</u>	<u>= \$ 6,750.00</u>
Total Fees	= \$12,475.00
<u>Less payments</u>	<u>= \$ 5,725.00</u>
Balance Due NASD Dispute Resolution	= \$ 6,750.00

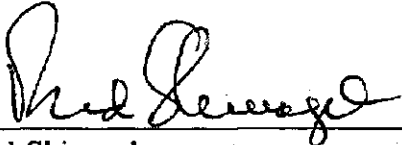
All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Fred Shinagel	-	Non-Public Arbitrator, Presiding Chair
Joseph J. Leegan	-	Non-Public Arbitrator
Matthew J. Tolan	-	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.



Fred Shinagel
Non-Public Arbitrator, Presiding Chair

12-1-02
Signature Date

Joseph J. Leegan
Non-Public Arbitrator

Signature Date

Matthew J. Tolan
Non-Public Arbitrator

Signature Date

December 10, 2002

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

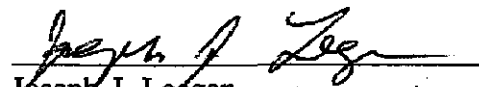
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Fred Shinagel
Non-Public Arbitrator, Presiding Chair

Signature Date



Joseph J. Leegan
Non-Public Arbitrator

December 2, 2002
Signature Date

Matthew J. Tolan
Non-Public Arbitrator

Signature Date

December 10, 2002

Date of Service (For NASD Dispute Resolution use only)

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Non-Public Arbitrator, Presiding Chair

Signature Date

Joseph J. Leegan
Non-Public Arbitrator

Signature Date



Matthew J. Tolan
Non-Public Arbitrator

12/3/02

Signature Date

December 10, 2002

Date of Service (For NASD Dispute Resolution use only)