

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Briolette Investment, Ltd.

Case Number: 02-00147

Name of the Respondents

James W. O'Connor

First Liberty Investment Group, Inc.

Fiserv Correspondent Services, Inc., n/k/a Fiserv Securities, Inc.

Hearing Site: Philadelphia, PA

REPRESENTATION OF PARTIES

Claimant, Briolette Investment, Ltd. ("Briolette"), hereinafter referred to as "Claimant", was represented by John E. Lawlor, Esq., Attorney at Law, Mineola, New York:

Respondent, James W. O'Connor ("O'Connor"), hereinafter referred to as "Respondent O'Connor", appeared at the hearing *pro se*.

Respondent, Fiserv Correspondent Services, Inc. n/k/a Fiserv Securities, Inc., hereinafter referred to as "Respondent Fiserv", was represented by Richard Z. Freeman, Jr., Esq., Attorney at Law, Philadelphia, Pennsylvania.

Respondent, First Liberty Investment Group, Inc. ("First Liberty"), hereinafter referred to as "Respondent First Liberty", was not represented by counsel and did not appear at the hearing.

CASE INFORMATION

Statement of Claim filed on: January 8, 2002.

Rob Gillingham, Director of Claimant, signed the Uniform Submission Agreement on: May 7, 2002.

Statement of Answer filed by Respondent O'Connor on: June 24, 2002.

Respondent O'Connor signed the Uniform Submission Agreement on: June 24, 2002.

Statement of Answer filed by Respondent Fiserv on: June 27, 2002.

Respondent Fiserv did not file a Uniform Submission Agreement.

Respondent First Liberty did not file a Statement of Answer or a Uniform Submission Agreement.

Respondent O'Connor filed a Motion to Dismiss on: May 13, 2003.

Respondent Fiserv filed a Response to the Motion to Dismiss on: May 21, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract and unjust enrichment. The causes of action relate to a loan agreement Claimant entered into with Delphi Holdings, LLC, which was transferred to Respondent First Liberty.

Unless specifically admitted in his Answer, Respondent O'Connor denied the allegations made in the Statement of Claim and asserted the following defenses: that he was not a personal guarantor of the loans in question; that he is no longer the President of Respondent First Liberty; and, that he has no personal knowledge of facts contained in the Statement of Claim.

Unless specifically admitted in its Answer, Respondent Fiserv denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; Claimant has suffered no compensable damages; Claimant's claim is barred by the doctrines of laches, waiver, estoppel, unclean hands, and contributory negligence; there was no breach of duty; and, Claimant lacks standing.

RELIEF REQUESTED

Claimant requested:

Total Compensatory Damages	\$ 500,000
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondent O'Connor requested that the case against him be dismissed.

Respondent Fiserv requested that the case against it be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondent First Liberty 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 First Liberty did not file with NASD Dispute Resolution, 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 Panel on all issues submitted.

Prior to the hearing, Claimant discontinued with prejudice its claims against Respondent Fiserv.

The Panel did not issue a ruling regarding Respondent O'Connor's Motion to Dismiss.

The parties 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. That Respondent First Liberty is liable to and shall pay to Claimant compensatory damages in the amount of five-hundred thousand dollars (\$500,000), plus simple interest at a rate of 6% per annum from January 1, 2001 until the date the award is paid in full;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent O'Connor's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent O'Connor must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. That the parties shall bear their respective costs, including attorneys fees, except as Fees are specifically addressed below; and,
4. That any and all claims for relief not specifically addressed herein are denied in their entirety.

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
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondents First Liberty and Fiserv are parties.

Respondent First Liberty

Member surcharge	= waived
Pre-hearing process fee	= waived
Hearing process fee	= waived

Respondent Fiserv

Member surcharge	= \$ 1,700
Pre-hearing process fee	= \$ 750

Hearing process fee = \$ 2,250

Forum Fees and Assessments

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

One (1) Pre-hearing session with Panel @ \$ 1,125 = \$ 1,125

Pre-hearing conference: December 3, 2002 1 session

One (1) Hearing session @ \$ 1,125 = \$ 1,125

Hearing Date: June 3, 2003 1 session

Total Forum Fees = \$ 2,250

The Panel has assessed \$ 2,250 of the forum fees to Claimant.

Fee Summary

1. Claimant Briquette is assessed and shall pay:

Initial Filing Fee = \$ 300

Forum Fees = \$ 2,250

Total Fees = \$ 2,550

Less payments = \$ 1,575

Balance Due NASD Dispute Resolution = \$ 975

2. Respondent Fiserv is assessed and shall pay:

Member Fees = \$ 5,200

Total Fees = \$ 5,200

Less payments = \$ 7,000

Refund owed to Respondent Fiserv = \$ 1,800

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

ARBITRATION PANEL

Allen Kilik, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard E. Lerner, Esq.	-	Public Arbitrator, Panelist
Donald M. Collins, Esq.	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Allen Kilik

Allen Kilik, Esq.
Public Arbitrator, Presiding Chairperson

6-26-03

Signature Date

Richard E. Lerner, Esq.
Public Arbitrator, Panelist

Signature Date

Donald M. Collins, Esq.
Non-Public Arbitrator, Panelist

Signature Date

July 9, 2003
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

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Public Arbitrator, Presiding Chairperson

Signature Date

Richard E. Lerner
Richard E. Lerner, Esq.
Public Arbitrator, Panelist

6/26/03
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Donald M. Collins, Esq.
Non-Public Arbitrator, Panelist

Donald M. Collins, 6/30/03
Signature Date

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