

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Sandeep D. Kitson and Gurpreet S. Sabharwal, (Claimants) vs. Investprivate, Inc., Scott L. Mathis, and Alan H. Underberg, (Respondents)

Case Number: 02-02889

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants, Sandeep D. Kitson ("Kitson") and Gurpreet S. Sabharwal ("Sabharwal"), hereinafter collectively referred to as "Claimants": Stuart A. Jackson, Esq., Re, Parser & Partners, New York, NY.

Respondents, Investprivate, Inc. ("Investprivate") and Scott L. Mathis ("Mathis"): Eric S. Hutner, Esq., Eric S. Hutner & Associates, New York, NY.

Respondent, Alan H. Underberg ("Underberg"): appeared pro se. Previously represented by Eric S. Hutner, Esq., Eric S. Hutner & Associates, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: May 14, 2002.

Amended Statement of Claim filed on or about: May 17, 2002.

Reply to Respondents Mathis and Underberg's Motion to Dismiss and Respondent Investprivate's Counterclaim filed by Claimants on or about: September 25, 2002.

Claimants signed the Uniform Submission Agreement: May 15, 2002.

Joint Statement of Answer to Amended Statement of Claim filed by Respondents Investprivate, Mathis, and Underberg on or about: August 12, 2002.

Motion to Dismiss filed by Respondents Mathis and Underberg on or about: August 12, 2002.

Counterclaim filed by Respondent Investprivate on or about: August 12, 2002.

Respondent Mathis signed the Uniform Submission Agreement: August 12, 2002.

Respondent Investprivate signed the Uniform Submission Agreement.

Respondent Underberg signed the Uniform Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: Claimants contended that they were recruited by InvestPrivate, Mathis and Underberg (collectively referred to as "Respondents") and that in order to induce them to leave their current employer Respondents made misrepresentations and omissions. Claimants also contended that they relied upon these misrepresentations and omissions to their financial detriment.

Unless specifically admitted in their Answer, Respondents Investprivate, Mathis and Underberg denied the allegations made in the Amended Statement of Claim and asserted various affirmative defenses.

In its Counterclaim, Respondent Investprivate asserted the following causes of action: breach of contract, fraud, misrepresentation, theft by deception, misappropriated a corporate opportunity, and civil conspiracy.

Unless specifically admitted in their Reply, Claimants denied the allegations made in Respondent Investprivate's Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested:

1. Compensatory damages in the sum of \$2,000,000.00 for Claimant Kitson and compensatory damages in the sum of \$2,000,000.00 for Claimant Sabharwal;
2. A determination that the confessions of judgment signed by Claimants were procured by fraud and are unenforceable;
3. The costs and disbursements of this arbitration proceeding;
4. Such other and further relief as may be just and proper.

In its Counterclaim, Respondent Investprivate requested:

1. Compensatory damages in an amount to be proven at the hearing, but not less than \$250,000.00;
2. Punitive damages in the sum of \$2,500,000.00;
3. The costs and disbursements of this arbitration proceeding, including attorneys' fees;
4. Such other and further relief as may be just and proper.

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

At the hearing in this matter, Claimants verbally made a Motion to amend their Statement of Claim to provide for expungement of material on Claimant Sabharwal's U-5 form.

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. Claimants' claims are hereby denied in their entirety.
2. Claimants Kitson and Sabharwal are jointly and severally liable and shall pay to Respondent Investprivate the sum of \$1,000.00 as compensatory damages, plus interest at the rate of 9% accruing from the date of service of this award until the date of payment.
3. Any and all relief not specifically addressed herein, including punitive damages, is 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	= \$ 600.00
Counterclaim filing fee	= \$2,000.00

#### **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 persons at the time of the events giving rise to the dispute. Accordingly, Investprivate, Inc. is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

April 16-17, adjournment by Mathis	= \$ WAIVED
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**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 session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: March 14, 2003 1 session	
One (1) Pre-hearing session with Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: December 4, 2002 1 session	
Five (5) Hearing sessions @ \$1,200.00	= \$6,000.00
Hearing Dates: April 14, 2003 2 sessions	
April 15, 2003 2 sessions	
May 20, 2003 1 session	
Total Forum Fees	= \$7,650.00

1. The Panel has assessed all of the forum fees jointly and severally against Claimants Kitson and Sabharwal.

**Fee Summary**

1. Claimants Kitson and Sabharwal are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	= \$7,650.00
Total Fees	= \$8,250.00
<u>Less payments</u>	= \$1,800.00
Balance Due NASD Dispute Resolution	= \$6,450.00
2. Respondent Investprivate is solely liable for:

Counterclaim Filing Fee	= \$ 2,000.00
<u>Member Fees</u>	= \$ 8,550.00
Total Fees	= \$10,550.00
<u>Less payments</u>	= \$11,750.00
Refund Due	= \$ 1,200.00

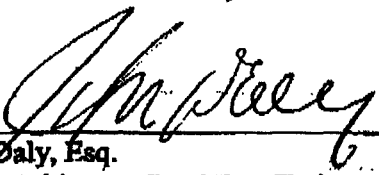
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.
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**ARBITRATION PANEL**

John Daly, Esq.	Public Arbitrator, Presiding Chair
Douglas John Baumann, Esq.	Public Arbitrator
Charles E. Stewart, Esq.	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 in which is my award.

  
\_\_\_\_\_  
John Daly, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Douglas John Baumann, Esq.  
Public Arbitrator

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Signature Date

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Charles E. Stewart, Esq.  
Non-Public Arbitrator

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Signature Date

June 27, 2003

Date of Service (For NASD Dispute Resolution use only)

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Charles E. Stewart, Esq.	-	Non-Public Arbitrator

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Signature Date

  
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Douglas John Baumann, Esq.  
Public Arbitrator

6-26-03  
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Signature Date

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