

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Steven Messina, Brian Kelly, and Thomas Messina (Claimants) vs. A.B. Watley, Inc.
(Respondent)

Case Number: 02-04649

Hearing Site: New York, New York

Nature of the Dispute: Associated Persons vs. Member

REPRESENTATION OF PARTIES

Claimants Steven Messina ("S. Messina") and Thomas Messina ("T. Messina"): Steven D. Oppenheim, Esq., and Philip di Domenico, Esq., Faust, Rabbach, & Oppenheim, LLP, New York, NY.

Claimant Brian Kelly ("B. Kelly") appeared *pro-se*. Previously represented by Steven D. Oppenheim, Esq., and Philip di Domenico, Esq., Faust, Rabbach, & Oppenheim, LLP, New York, NY.

Claimants S. Messina, T. Messina, and B. Kelly hereinafter collectively referred to as "Claimants".

Respondent A.B. Watley, Inc. hereinafter referred to as "Respondent": Robert Malin, A.B. Watley, Inc., New York, NY.

CASE INFORMATION

Joint Statement of Claim filed by Claimants on or about: August 7, 2002.
S. Messina signed the Uniform Submission Agreement: July 24, 2002.
T. Messina signed the Uniform Submission Agreement: July 24, 2002.
B. Kelly signed the Uniform Submission Agreement: July 24, 2002.

Statement of Answer filed by Respondent on or about: October 1, 2002.
Amended Statement of Answer and Counterclaims filed by Respondent on or about: January 7, 2003.
Respondent did not submit a Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: breach of employment contract, failure to pay commissions, and compensation.

Unless specifically admitted in its Amended Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In its Counterclaim, Respondent asserted the following causes of action: breach of fiduciary duty, unauthorized competition, and failure to repay expenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$150,693.00 plus interest, punitive damages in the amount of \$298,536.00, an Order amending Claimants' Forms U5 removing all references to their alleged violation of Rule 3030 and/or any other improper conduct, and stating as the reason for termination "mutual agreement", costs, attorneys' fees, expenses, witness fees, production fees, and any other additional relief which the Panel deems to be just and appropriate under the circumstances.

Respondent requested dismissal of the Statement of Claim in its entirety.

In its Counterclaims, Respondent requested compensatory damages in the amount of \$608,000.00 plus interest, attorneys' fees, costs, and such other and further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent A.B. Watley, Inc. did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the Claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

In December, 2005 Claimants informed NASD Dispute Resolution that the parties settled this matter on the condition that the Panel grants Claimants' request to Amend their Forms U5.

On March 31, 2006 a telephonic pre-hearing conference was held regarding Claimants' Request to Amend their Forms U5. By Order dated April 3, 2006 the Panel granted Claimants' Request to Amend as outlined in the Award section below.

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 March 31, 2006 telephonic pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The parties have entered into a confidential settlement agreement.
2. The Panel recommends the expungement of the Reason for Termination and the accompanying Termination Comment as reported in Section 3 on the Form U5 filed with Central Registration Depository ("CRD") on Claimant Steven Messina's behalf

- by Respondent based on the defamatory nature of the information contained in CRD. The Reason for Termination as reported on the Form U5 is "Discharge". The Reason for Termination should be expunged and replaced with "Voluntary Resignation". The Termination Comment as reported on the Form U5 should be expunged with no replacement language.
3. The Panel recommends the expungement of the Reason for Termination and the accompanying Termination Comment as reported in Section 3 on the Form U5 filed with Central Registration Depository ("CRD") on Claimant Thomas Messina's behalf by Respondent based on the defamatory nature of the information contained in CRD. The Reason for Termination as reported on the Form U5 is "Discharge". The Reason for Termination should be expunged and replaced with "Voluntary Resignation". The Termination Comment as reported on the Form U5 should be expunged with no replacement language.
 4. The Panel recommends the expungement of the Reason for Termination and the accompanying Termination Comment as reported in Section 3 on the Form U5 filed with Central Registration Depository ("CRD") on Claimant Brian Kelly's behalf by Respondent based on the defamatory nature of the information contained in CRD. The Reason for Termination as reported on the Form U5 is "Discharge". The Reason for Termination should be expunged and replaced with "Voluntary Resignation". The Termination Comment as reported on the Form U5 should be expunged with no replacement language.
 5. 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	= \$	300.00
Counterclaim filing fee	= \$	1,250.00

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. Accordingly, A.B. Watley, Inc. is a party.

Member Surcharge	= \$	1,700.00
Pre-hearing Process Fee	= \$	750.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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 Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: March 31, 2006 1 session	
Total Forum Fees	= \$ 1,200.00

1. Pursuant to Rule 10306:

- Claimant T. Messina is assessed \$300.00 of the forum fees.
- Claimant S. Messina is assessed \$300.00 of the forum fees.
- Claimant B. Kelly is assessed \$300.00 of the forum fees.
- Respondent is assessed \$300.00 of the forum fees.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 525.00
Refund Due Claimants	= \$ 225.00

2. Claimant T. Messina is solely liable for:

Forum Fees	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Claimant S. Messina is solely liable for:

Forum Fees	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Claimant B. Kelly is solely liable for:

Forum Fees	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

5. Respondent is solely liable for:

Counterclaim Filing Fee	= \$ 1,250.00
Member Fees	= \$ 2,450.00
Forum Fees	= \$ 300.00
Total Fees	= \$ 4,000.00
Less payments	= \$ 4,900.00
Refund Due Respondent	= \$ 900.00

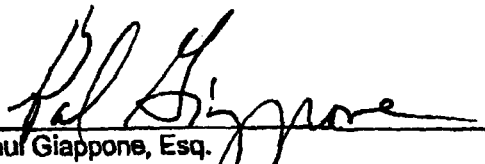
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Paul Giappone, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Thomas M. Amadio	-	Non-Public Arbitrator
Dale Berman	-	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.



Paul Giappone, Esq.
Non-Public Arbitrator, Presiding Chairperson

8/21/06

Signature Date

Thomas M. Amadio
Non-Public Arbitrator

Signature Date

Dale Berman
Non-Public Arbitrator

Signature Date

August 23, 2006

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Paul Giappone, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Thomas M. Amadio	-	Non-Public Arbitrator
Dale Berman	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

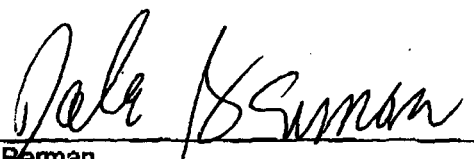
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Paul Giappone, Esq.
Non-Public Arbitrator, Presiding Chairperson

Signature Date

Thomas M. Amadio
Non-Public Arbitrator

Signature Date



Dale Berman
Non-Public Arbitrator



Signature Date

August 23, 2006

Date of Service (For NASD Dispute Resolution use only)