
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Janney Montgomery Scott LLC

Case Number: 02-05124

Name of the Respondent

Marlene Hart

Hearing Site: Orlando, Florida

Nature of the Dispute: Member vs. Associated Person

REPRESENTATION OF PARTIES

For Janney Montgomery Scott LLC, referred to as "Claimant": Michael S. Taaffe, Esq., Jennifer B. Compton, Esq. and Lisa C. Conley, Esq., Abel, Band, Russell, Collier, Pitchford & Gordon, Chartered, Sarasota, Florida.

For Marlene Hart, referred to as "Respondent Hart": Stephen W. Beik, Esq., Law Offices of Stephen W. Beik, P.A., Maitland, Florida. On or about November 19, 2003, Stephen W. Beik, Esq. withdrew as counsel. Thereafter, Respondent Hart did not appear or participate.

CASE INFORMATION

Statement of Claim filed on or about: August 29, 2002.

Claimant signed the Uniform Submission Agreement on: August 27, 2002.

Statement of Answer, Affirmative Defenses and Counterclaim filed by Respondent Hart on or about: December 5, 2002.

Respondent Hart signed the Uniform Submission Agreement on: November 1, 2002.

Reply in Avoidance of Affirmative Defense and Answer to Counterclaim filed by Claimant on or about: October 17, 2003.

Motion to Dismiss Respondent Hart's Counterclaims and to Bar Respondent's Answer and Affirmative Defenses and Counterclaims filed by Claimant on or about: December 13, 2002.

CASE SUMMARY

Claimant alleged a claim to recover amounts owed under a Promissory Note dated August 2, 2001.

Respondent Hart denied the allegations made in the Statement of Claim and asserted various defenses.

Respondent Hart alleged the following non-statutory causes of action in her Counterclaim: 1) fraud in the inducement; 2) wrongful termination; and 3) wrongful interference with Respondent Hart's business relationships with her customers. The causes of action relate to Respondent Hart's employment and termination of employment with Claimant.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in the amount of \$292,060.00; 2) interest at the rate of 4.00% per annum due and owing under the Promissory Note; 3) costs; 4) attorneys' fees; and 5) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondent Hart requested: 1) dismissal of the Statement of Claim in its entirety; 2) compensatory damages; 3) costs; and 4) attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

On or about March 21, 2003, Respondent Hart filed for bankruptcy in the United States Bankruptcy Court, Middle District of Florida.

On or about April 10, 2003, the United States Bankruptcy Court entered its Order Dismissing Case. The Court: 1) dismissed Respondent Hart's bankruptcy; 2) lifted the automatic stay under 11 U.S.C. Section 362; and 3) enjoined Respondent Hart from filing for relief under any provision of Title 11 for a period of 180 days.

On or about April 21, 2003, Respondent Hart re-filed for bankruptcy in the United States District Court, Middle District of Florida.

On or about April 25, 2003, the United States Bankruptcy Court entered its Order Dismissing Case. The Court: 1) dismissed Respondent Hart's bankruptcy; 2) found that Respondent Hart violated the Court's Order of April 10, 2003; and 3) enjoined her from re-filing for relief under any provision of Title 11 of the United States Bankruptcy Code for a period of an additional 180 days.

On or about November 17, 2003, Respondent Hart filed a Suggestion of Bankruptcy. Respondent Hart suggested that the above-captioned arbitration proceeding is stayed pursuant to 11 U.S.C. Section 362 by virtue of her re-filing bankruptcy.

On or about November 20, 2003, the United States Bankruptcy Court entered its Order Dismissing Case. The Court: 1) dismissed Respondent Hart's bankruptcy; 2) found that Respondent Hart violated the Court's Order of April 25, 2003; 3) enjoined her from filing for relief under any provisions of Title 11 for a period of 180 days from the conclusion of the existing injunction period; 4) determined that any attempt to invoke the automatic stay provisions of 11 U.S.C. Section 362 is annulled until October 4, 2004; 5) notified creditors and interested parties that any suggestions of bankruptcy and the imposition of the automatic stay is annulled and is of no effect until October 4, 2004 without further Order of the Court; and 6) determined that the above-captioned arbitration may proceed as scheduled, unless otherwise ordered by the Court.

Respondent Hart did not appear at the evidentiary hearing. Upon review of the file and the representations made by/on behalf of the Claimant, the Panel determined that Respondent Hart was 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").

The Panel has denied Claimant's Motion to Dismiss Respondent Hart's Counterclaims and to Bar Respondent's Answer and Affirmative Defenses and Counterclaims.

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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Hart is liable under the Promissory Note and shall pay to Claimant compensatory damages in the amount of \$292,060.00, plus pre-judgment interest at the rate of 4.00% per annum from August 2, 2001 until November 18, 2003.
2. Respondent Hart is liable and shall pay to Claimant costs and attorneys' fees. The Panel defers determination on the amounts of costs and attorneys' fees to a court of competent jurisdiction. Attorneys' fees are awarded pursuant to Section 57.105, Florida Statutes.
3. Respondent Hart is liable and shall reimburse Claimant \$1,000.00 which represents the claim filing fee previously paid by Claimant to NASD Dispute Resolution.
4. Respondent Hart's claims are denied in their entirety.
5. Respondent Hart's requests for costs and attorneys' fees are denied.
6. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$1,000.00
Counterclaim filing fee	= \$ 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, Claimant is a member firm and a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

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:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 per session	= \$2,250.00
Pre-hearing conferences: September 26, 2003 1 session	
November 12, 2003 1 session	
Four (4) Hearing sessions @ \$1,125.00 per session	= \$4,500.00
Hearing Dates: November 18, 2003 2 sessions	
November 19, 2003 2 sessions	

Total Forum Fees	= \$6,750.00
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The Panel has assessed the total forum fees in the amount of \$6,750.00 to Respondent Hart.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$1,000.00
<u>Member Fees</u>	<u>= \$5,200.00</u>
Total Fees	= \$6,200.00
<u>Less payments</u>	<u>= \$6,200.00</u>
Balance Due NASD	= \$ 0.00

Respondent Hart is solely liable for:

Counterclaim filing fee	= \$ 250.00
<u>Forum Fees</u>	<u>= \$6,750.00</u>
Total Fees	= \$7,000.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD	= \$7,000.00

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

ARBITRATION PANEL

<i>James T. Pearce</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Sherman S. Dantzler</i>	-	<i>Public Arbitrator</i>
<i>Robert S. Natiss</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

 /s/
James T. Pearce
Public Arbitrator, Presiding Chairperson

December 9, 2003
Signature Date

 /s/
Sherman S. Dantzler
Public Arbitrator

December 9, 2003
Signature Date

 /s/
Robert S. Natiss
Non-Public Arbitrator

December 9, 2003
Signature Date

December 10, 2003
Date of Service (For NASD use only)

NASD Dispute Resolution
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James T. Pearce
James T. Pearce
Public Arbitrator, Presiding Chairperson

12/9/03
Signature Date

Sherman S. Dantzler
Public Arbitrator

Signature Date

Robert S. Natiss
Non-Public Arbitrator

Signature Date

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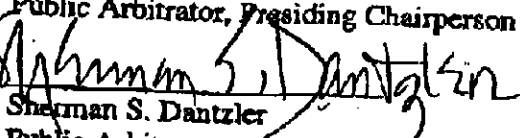
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Sherman S. Dantzler
Robert S. Natiss

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

James T. Pearce
Public Arbitrator, Presiding Chairperson

Sherman S. Dantzler
Public Arbitrator

Signature Date

9 Dec. 2003
Signature Date

Robert S. Natiss
Non-Public Arbitrator

Signature Date

Date of Service (For NASD use only)

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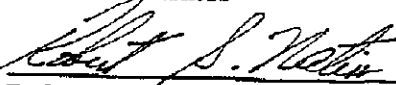
Concurring Arbitrators' Signatures

James T. Pearce
Public Arbitrator, Presiding Chairperson

Signature Date

Sherman S. Dantzler
Public Arbitrator

Signature Date


Robert S. Natiss
Non-Public Arbitrator

Dec. 9, 2003
Signature Date

Date of Service (For NASD use only)