

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 02-05202

Continental Broker-Dealer Corp.

Name of the Respondent

Hearing Site: Boca Raton, Florida

Stephen D. Berg

REPRESENTATION OF PARTIES

For Continental Broker-Dealer Corp., hereinafter referred to as "Claimant": Timothy Feil, Esq., Finkelstein & Feil, LLP, Garden City, New York.

Stephen D. Berg, hereinafter referred to as "Respondent", appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: September 4, 2002.

Claimant signed the Uniform Submission Agreement: September 3, 2002.

Motion to Preclude filed by Claimant on or about: February 19, 2003.

Statement of Answer filed by Respondent on or about: March 14, 2003.

Respondent did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the cause of action of breach of contract. The cause of action relates to the Employment Agreement dated March 20, 2002 entered into between Claimant and Respondent.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$34,300.06, plus interest at the rate of 9% per annum from mid-August 2002, attorney's fees and filing fees.

Respondent did not specifically delineate a relief request.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration

Procedure (the "Code") and having answered the claim and appeared at the hearing, is bound by the determinations of the Arbitrator on all issues submitted.

On or about April 4, 2003, the Arbitrator issued an order which denied Claimant's Motion to Preclude.

Respondent was not present at 9:00 AM for the evidentiary hearing on May 30, 2003. The NASD Dispute Resolution staff member assigned to this matter called Respondent inquiring as to his whereabouts as the hearing was about to commence. Respondent's spouse indicated that Respondent was out and she would try to reach him with respect to same. The Arbitrator determined to wait until 9:30 AM to allow Respondent an opportunity to respond to the NASD Dispute Resolution staff member's call. At 9:30 AM, no response had been received from Respondent. As such, the Arbitrator determined to commence the evidentiary hearing without Respondent in attendance.

At that time, Claimant made an ore tenus motion to preclude Respondent from presenting any defense, in the event Respondent later appeared at the evidentiary hearing, on the basis that Respondent did not file a witness or exhibit list. The Arbitrator granted Claimant's request and stated that, in the event Respondent appeared, Respondent would be precluded from presenting any direct evidence, but Respondent would be permitted to cross-examine any witnesses and provide rebuttal testimony.

Thereafter, at approximately 10:15 AM, Respondent contacted the NASD Dispute Resolution staff member assigned to this case and was joined into the hearing room by speakerphone. The Arbitrator questioned Respondent as to why he was not physically present at the evidentiary hearing. Respondent asserted that he had received a voice mail message from NASD Dispute Resolution staff stating that the evidentiary hearing was canceled. Respondent further stated that he had saved said voice mail message. The Arbitrator instructed Respondent to play said voice mail message for the record. The voice mail message indicated that it was the MCI conferencing center calling to cancel a conference call. The Arbitrator pointed out to Respondent that the message was meant to cancel the April 28, 2003 discovery pre-hearing conference that had been tentatively scheduled during the initial pre-hearing conference in this matter, as said conference call had not been needed. The Arbitrator further stated that Respondent was previously informed, in-writing, by NASD Dispute Resolution that the evidentiary hearing would be in-person and not via a conference call. Respondent then made an ore tenus motion for postponement of the evidentiary hearing for seven (7) days in order to allow him time to discuss settlement of this matter with Claimant. Claimant did not respond to same. The Arbitrator denied Respondent's request for postponement.

Thereafter, Respondent requested that he be permitted to appear telephonically at the evidentiary hearing. Claimant did not object to same. The Arbitrator granted Respondent's request. The Arbitrator informed Respondent that due to his failure to file a witness and exhibit list in this matter, he was precluded from presenting any direct evidence but he would be permitted to cross-examine Claimant's witnesses and provide rebuttal testimony.

At the conclusion of the evidentiary hearing on May 30, 2003, the Arbitrator directed Claimant to file, by not later than June 9, 2003, an affidavit of costs and attorney's fees incurred in this matter. In addition, the Arbitrator said that Respondent's response, if any, was due by not later than June 19, 2003. On or about June 2, 2003, Claimant filed with NASD Dispute Resolution an Affirmation of Timothy Feil, Esq. Regarding Legal Fees and Costs Incurred by Claimant. No response to same was filed by Respondent.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submission by Claimant, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is found liable to Claimant on the claim for breach of contract. As such, Respondent shall pay to Claimant compensatory damages in the amount of \$34,300.06, plus interest at the legal rate in Florida from September 3, 2002 until the date of payment of the Award.

Respondent is liable pursuant to the Employment Agreement dated March 20, 2002 and shall pay to Claimant attorney's fees in the amount of \$2,500.00.

Respondent is liable and shall pay to Claimant the sum of \$1,000.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

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

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

Member surcharge	= \$875.00
Pre-hearing process fee	= \$750.00
Hearing process fee	= \$1,000.00

Adjournment Fees

No requests for adjournments were granted in this matter.

Injunctive Relief Fees

No injunctive relief fees were incurred in this matter.

Forum Fees and Assessments

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, 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 11, 2003 1 session

One (1) Hearing session with a single arbitrator @ \$450.00 = \$450.00
Hearing Date: May 20, 2003 1 session

Total Forum Fees = \$900.00

The Arbitrator has assessed \$450.00 of the forum fees to Claimant.

The Arbitrator has assessed \$450.00 of the forum fees to Respondent.

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 are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

No administrative costs were incurred in this matter.

FEE SUMMARY

Claimant is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$2,625.00
Forum Fees	= \$450.00

Total Fees	= \$4,075.00
Less payments	= \$4,075.00

Balance Due NASD Dispute Resolution	= \$0.00
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Respondent is solely liable for:

Forum Fees	= \$450.00
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Total Fees	= \$450.00
Less payments	= \$0.00

Balance Due NASD Dispute Resolution = \$450.00

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

ARBITRATOR

Marc S. Dobin, Esq.

Non-Public Arbitrator, Presiding Chair

Arbitrator's Signature

/s/

07/23/03

Marc S. Dobin, Esq.

Non-Public Arbitrator, Presiding Chair

Signature Date

07/23/03

Date of Service (For NASD Dispute Resolution office use only)

Balance Due NASD Dispute Resolution

= \$450.00

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

ARBITRATOR

Marc S. Dobin, Esq.

- Non-Public Arbitrator, Presiding Chair

Arbitrator's Signature



Marc S. Dobin, Esq.

Non-Public Arbitrator, Presiding Chair

6/23/2003

Signature Date

Date of Service (For NASD Dispute Resolution office use only)