

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

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In the Matter of the Arbitration Between:

Name of the Claimant/Counter Respondent  
Mesirow Financial, Inc.

Case Number: 02-5401

Name of the Respondent /Counterclaimant  
Richard L. Mundrane

Hearing Site: Chicago, Illinois

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**REPRESENTATION OF PARTIES**

Claimant/Counter Respondent Mesirow Financial, Inc. hereinafter referred to as "Mesirow":  
Ronald P. Kane, Esq., of Kane & Fisher, Ltd., located in Chicago, Illinois.

Respondent/Counterclaimant Richard L. Mundrane hereinafter referred to as "Mundrane"; Brad  
Twedt, Esq., of Neal, Gerber & Eisenberg, located in Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed: September 11, 2002.

Mesirow signed the Uniform Submission Agreement: September 5, 2002.

Mesirow filed a Response to Mundrane's counterclaim on December 5, 2002.

Mundrane filed a Statement of Answer on September 17, 2002.

Mundrane signed the Uniform Submission Agreement: November 7, 2002.

**CASE SUMMARY**

Mesirow alleged the following causes of action:

1. Breach of Promissory Note dated October 9, 1998;
2. Failure to contribute; and,
3. Breach of contracts in connection with his employment at Mesirow.

*All of Claimant's causes of action relate to Respondent's employment contacts and promissory note/forgivable loan with Claimant's firm.*

Unless specifically admitted in his Statement of Answer, Mundrane denied the allegations made in the Statement of Claim and submitted the following affirmative defenses:

1. Mundrane had the contractual right to solicit certain clients;
2. Mesirow has no legitimate, protectable interest in Mundrane's clients;
3. Mesirow is bared from asserting the claims in issue by its own conduct; and,
4. Mesirow's allegation that Mundrane failed to contribute is false;

Mundrane alleged the following causes of action against Claimant;

1. Tortious interference with business relations and expectations;
2. Violations of Illinois Wage Payment & Collection Act; and
3. Defamation per se.

Unless specifically admitted in Mesirow's response to Mundrane's Counterclaim, Mesirow denied the allegations in the Counterclaim and asserted the following affirmative defenses:

1. Mundrane does not have a claim for tortious interference;
2. Non-solicitation provisions of the contract are legally enforceable;
3. Mundrane does not have a claim under the Wage Payment & Collections Act;
4. Mundrane has no basis for claiming punitive damages; and
5. Mundrane was not defamed by Mesirow.

On December 1, 2002, Claimant filed a Motion to Liquidate The Respondent's Account.

On January 6, 2003 Respondent filed an Opposition to Claimant's Motion to Liquidate the Respondent's account.

On January 29, 2003 Claimant filed a reply to the Motion to Liquidate the Respondent's account.

On March 11, 2003 Claimant filed a Motion to Return Security.

On April 4, 2003 Respondent filed an opposition to the Motion to Return Security.

#### RELIEF REQUESTED

Mesirow requested:

Compensatory Damages	\$ 121,336.13
Punitive Damages	\$ Unspecified
Interest	\$ Unspecified
Attorneys' Fees	\$ Unspecified
Other Costs	\$ Unspecified

Mundrane requested:

Compensatory Damages	\$ 3,000.00
Punitive Damages	\$ 25,000.00
Interest	\$ Unspecified
Attorneys' Fees	\$ Unspecified
Other Costs	\$ penalty of twice the sum of compensatory damages

#### OTHER ISSUES CONSIDERED AND DECIDED

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. In either case, the parties have agreed to receive conformed copies of the award while the original remain on file with the NASD Dispute Resolution (the "NASD").

On April 10, 2003 the Panel denied Claimant's Motion to Liquidate the Respondent's Account. On April 10, 2003 the Panel also denied Claimant's Motion to Return Security.

### AWARD

After considering the pleadings, the testimony and evidence presented, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Richard L. Mundrane is liable for and shall pay to Mesirow Financial, Inc. compensatory damages in the sum of \$142,352.28. The aforementioned sum includes but is not limited to the reimbursement of damages under the McCarthy complaint in the amount of \$12,500.00 and the repayment of the principal and interest pursuant to the promissory note/forgivable loan from October 9, 1998 through September 25, 2003. In calculating the interest portion of the compensatory damages, the Panel has deducted as of August 16, 2002, \$2,686.93 of compensation which Claimant owes Respondent as specified in paragraph Four (4);
2. Respondent Richard L. Mundrane is liable for and shall pay to Mesirow Financial Inc., interest on the compensatory damages at a rate of \$12.83 per diem, which shall accrue from September 26, 2003 and shall cease to accrue when the Award is paid in full;
3. Respondent Richard L. Mundrane is liable and shall pay to Mesirow Financial, Inc. attorneys' fees in the amount of \$1,086.76. The authority for the attorneys' fees is provided in the promissory note;
4. Mesirow Financial Inc. is liable for and shall pay to Richard L. Mundrane compensatory damages in the sum of \$2,686.93;
5. Mesirow Financial Inc., is liable for and shall pay to Richard L. Mundrane his current balance in the Mesirow Financial Inc. Deferred Compensation Plan accounts as identified in Respondent's Exhibit Number Thirty-Nine (39);
6. Mesirow Financial Inc., shall immediately begin the process of delivering all accounts of Richard L. Mundrane and his spouse, whether jointly or individually, which are being held at Mesirow Financial Inc. to Richard L. Mundrane in accordance with his direction;
7. The Panel orders the amendment of Richard L. Mundrane's form U-5 to delete the second sentence in response to question number ten (10) under "Customer Complaint DRP" dated by Laura Lewandowski on September 12, 2002. It is the Panel's intention that the form be amended to read as follows: "The firm settled with the customer on November 1, 2001." The second section of the explanation section which reads, "Broker's contribution to the settlement was \$12,500, however he has refused to contribute the sum." shall be deleted. The Panel recommends the expungement of the above- referenced language based upon the defamatory nature of the information;
8. All costs not specifically enumerated herein shall be borne by the party who incurred them; and,
9. 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 = \$ 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, the Respondent Baird is a member firm.

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,700.00

**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 at 450.00 = \$ 450.00

August 20, 2003

September 23, 2003

Two (2) Pre-hearing session with the Panel at 1,125.00 = \$ 1,125.00

Pre-hearing conferences: April 4, 2003 1 session

Five (5) Hearing sessions @ \$1,125.00 = \$ 5,625.00

Hearing Dates: September 23, 2003 2 sessions

September 24, 2003 2 sessions

September 25, 2003 1 session

Total Forum Fees = \$ 7,200.00

The Panel has assessed \$3,600.00 of the forum fees to Respondent Mundrane.

The Panel has assessed \$3,600.00 of the forum fees to Claimant Mesirow.

**FEE SUMMARY**

Claimant /Counter Respondent:

Filing Fees = \$ 1000.00

Forum Fees = \$ 3,600.00

Member Fees = \$ 5,200.00

Total Fees = \$ 9,800.00

Less Payments = \$ 6,775.00

Balance Due to NASD Dispute Resolution = \$ 3,025.00

Respondent/ Counterclaimant Mundrane is solely liable for:

Counterclaim filing fees = \$ 250.00

Forum Fees = \$ 3,600.00

Total Fees = \$ 3,850.00

Less Payments = \$ 575.00

Balance Due to NASD Dispute Resolution = \$ 3,275.00

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

Arbitration Panel

Robin David, Esq.- Public Arbitrator, Presiding Chairperson

Joseph O. Kostner, Esq. - Public Arbitrator

Richard J. Belmonte, Esq. -Non-Public Arbitrator

Concurring Arbitrators' Signatures

Robin David, Esq.  
Public Arbitrator, Presiding Chair

Signature Date



Joseph O. Kostner, Esq.  
Public Arbitrator



Signature Date

Richard J. Belmonte, Esq.  
Non-Public Arbitrator

Signature Date

October 27, 2003

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

NASD # 02-05401

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Joseph O. Kostner, Esq.  
Public Arbitrator

Signature Date

*R J Belmonte*  
Richard J. Belmonte, Esq.  
Non-Public Arbitrator

*10/27/03*  
Signature Date

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