

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

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In the Matter of the Arbitration Between:

Raymond L. Dirks (Claimant) v. Barry W. Blank (Respondent)

Case Number: 02-05477

Hearing Site: New York, New York

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Nature of the Dispute: Associated Person vs. Associated Person

**REPRESENTATION OF PARTIES**

Claimant, Raymond L. Dirks, hereinafter referred to as "Claimant": A. Joseph Tandet, Esq., New York, NY.

Respondent, Barry W. Blank, hereinafter referred to as "Respondent": Barry Feiner, Esq., Manhasset, NY and John J. Phelan, III, Esq., John J. Phelan, III, P.C., New York, NY. Previously represented by: Charles R. Hoover, Esq., Flagstaff, AZ.

**CASE INFORMATION**

Statement of Claim filed on or about: September 11, 2002.

Claimant signed the Uniform Submission Agreement: September 13, 2002.

Statement of Answer filed by Respondent on or about: June 27, 2003.

Respondent did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: failure to pay for services performed and rendered; quantum meruit; breach of contract; fraud; and misrepresentation.

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

**RELIEF REQUESTED**

Claimant requested damages in the sum of \$405,000.00 together with costs, disbursements, reasonable attorneys' fees and such other relief as this Panel deems appropriate.

Respondent requested that Claimant's claims be dismissed in their entirety and that he be granted such other relief as the Panel may deem appropriate, including reasonable attorneys' fees and other costs and expenses related to his defense of this matter and, in

the event that the Panel should award any damages against Respondent, then such amount should be reduced by the amount of \$112,500.00 plus interest from April 15, 2002.

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

Respondent 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, and appeared at the hearing, is bound by the determination of the Panel on all issues submitted.

At the hearing on October 1, 2003, Claimant withdrew his claims with prejudice.

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, and Claimant's withdrawal of his claims, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby dismissed with prejudice.
2. Any and all relief not specifically addressed herein 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
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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 persons at the time of the events giving rise to the dispute. Accordingly, Dirks & Company, Inc. is the Claimant's firm.

Member surcharge	= \$1,700.00
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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:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 = \$2,250.00  
Pre-hearing conferences: April 28, 2003 1 session  
May 22, 2003 1 session

One (1) Hearing session @ \$1,125.00 = \$1,125.00

Hearing Date: October 1, 2003 1 session

Total Forum Fees = \$3,375.00

1. The Panel has assessed \$1,687.50 of the forum fees against Claimant.
2. The Panel has assessed \$1,687.50 of the forum fees against 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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Respondent requested copy of hearing tape = \$15.00

### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,687.50
Total Fees	= \$1,987.50
Less payments	= \$1,475.00
Balance Due NASD Dispute Resolution	= \$ 512.50

2. Respondent is solely liable for:

Administrative Costs	= \$ 15.00
Forum Fees	= \$1,687.50
Total Fees	= \$1,702.50
Less payments	= \$ 15.00
Balance Due NASD Dispute Resolution	= \$1,687.50

3. Dirks & Company, Inc. is solely liable for:

Member Fees	= \$1,700.00
Total Fees	= \$1,700.00
Less payments	= \$ .00
Balance Due NASD Dispute Resolution	= \$1,700.00

NASD Dispute Resolution

Arbitration No. 02-05477

Award Page 4 of 7

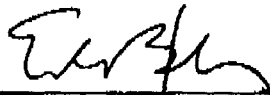
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Ellen R. Buxbaum, Esq.	-	Public Arbitrator, Presiding Chair
Paul Weinberg	-	Public Arbitrator
Henry F. Minnerop, 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 which is my award.



Ellen R. Buxbaum, Esq.  
Public Arbitrator, Presiding Chairperson

10/23/03

Signature Date

Paul Weinberg  
Public Arbitrator

Signature Date

Henry F. Minnerop, Esq.  
Non-Public Arbitrator

Signature Date

October 24, 2003  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

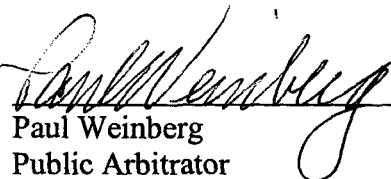
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Ellen R. Buxbaum, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Paul Weinberg  
Public Arbitrator

OCT. 20, 2003  
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Signature Date

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Henry F. Minnerop, Esq.  
Non-Public Arbitrator

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Signature Date

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Paul Weinberg  
Public Arbitrator

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Signature Date

  
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Henry F. Minnerop, Esq.  
Non-Public Arbitrator

10/16/03  
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Signature Date

October 24, 2003  
Date of Service (For NASD Dispute Resolution use only)