

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

The Island ECN, Inc. (Claimant) v. B-Trade Services, LLC (Respondent)

Case Number: 02-05647

Hearing Site: New York, New York

Nature of the Dispute: Member vs. Member

REPRESENTATION OF PARTIES

Claimant The Island ECN, Inc. hereinafter referred to as "Claimant": Max Gitter, Esq., Cleary, Gottlieb, Steen & Hamilton, New York, NY. Previously represented by: Vaishali Javeri, Associate General Counsel, The Island ECN, Inc., New York, NY.

Respondent B-Trade Services, LLC, hereinafter referred to as "Respondent": Susan DiCicco, Esq., King & Spalding, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: September 20, 2002.

Amended Statement of Claim filed on or about: July 28, 2003.

Reply to Counterclaim of B-Trade Services, LLC filed on or about: January 13, 2003.

Claimant signed the Uniform Submission Agreement: September 20, 2002.

Statement of Answer and Counterclaims filed by Respondent on or about: December 3, 2002.

Respondent signed the Uniform Submission Agreement: January 2, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; quantum meruit; unjust enrichment; and account stated. In its Reply to Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Counterclaim, Respondent asserted the following cause of action: breach of contract.

RELIEF REQUESTED

Claimant requested an award of general damages against B-Trade in the amount of no less than \$1,928,567.00, plus pre- and post-award interest; for a declaration that during the term of the B-Trade Contract, Claimant was entitled to payment of fees in accordance

with the applicable fee schedule pursuant to the relevant sections of the contract; for costs of the arbitration, including Claimant's reasonable attorneys' fees and forum fees; and for such other relief as the arbitration panel deems just and proper.

Respondent requested that the claims of Claimant be dismissed with prejudice, with an award of costs to Respondent; with regards to Respondent's Counterclaim, that they be awarded damages for breach of contract, in an amount to be determined at the hearing, but believed to exceed \$2.75 million plus interest and costs; and that the arbitration panel award such other and further relief as it may deem just and appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

By letter dated June 20, 2003, Claimant, Archipelago L.L.C. and REDIBook ECN L.L.C. filed a joint motion to sever the claims and counterclaims from the above-referenced arbitration and to be assigned a new arbitration number. The motion was granted at the initial pre-hearing conference held on June 24, 2003.

On or about July 31, 2003, Claimant filed a Motion for Dismissal and Summary Judgment. After due consideration, the Panel granted said Motion.

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

1. Respondent is liable for and shall pay to the Claimant compensatory damages in the sum of \$1,979,385.00, including pre-award interest in the amount of \$213,002.00, in accordance with the agreement of the parties as to these amounts.
2. Respondent is liable for and shall pay to Claimant the sum of \$5,000.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.
3. The Counterclaims of Respondent are hereby dismissed in their entirety.
4. 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	= \$5,000.00
Counterclaim filing fee	= \$2,000.00

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 Island ECN, Inc. is a party.

Member surcharge	= \$3,750.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,500.00

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, B-Trade Services, LLC is a party.

Member surcharge	= \$3,750.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,500.00

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:

Two Pre-hearing sessions with Panel @ \$1,200.00	= \$2,400.00
Pre-hearing conferences: June 24, 2003 1 session	
October 16, 2003 1 session	
Total Forum Fees	= \$2,400.00

1. The Panel has assessed \$2,400.00 of the forum fees against Respondent.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 5,000.00
Member Fees	= \$10,000.00
Total Fees	= \$15,000.00
Less payments	= \$17,750.00
Refund Due Claimant	= \$ 2,750.00

As stated in the "Award" section above, Respondent is liable for and shall reimburse Claimant for the \$5,000.00 filing fee.

2. Respondent is solely liable for:

Counterclaim Filing Fee	= \$ 2,000.00
Member Fees	= \$10,000.00
<u>Forum Fees</u>	<u>= \$ 2,400.00</u>
Total Fees	= \$14,400.00
<u>Less payments</u>	<u>= \$13,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,200.00

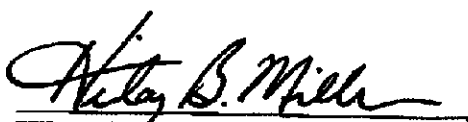
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Hilary B. Miller, Esq.	-	Public Arbitrator, Presiding Chair
Eric P. Nachman, Esq.	-	Public Arbitrator
Matthew Loguercio	-	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.


Hilary B. Miller, Esq.
Public Arbitrator, Presiding Chairperson

11/26/03
Signature Date

Eric P. Nachman, Esq.
Public Arbitrator

Signature Date

Matthew Loguercio
Non-Public Arbitrator

Signature Date

December 3, 2003
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

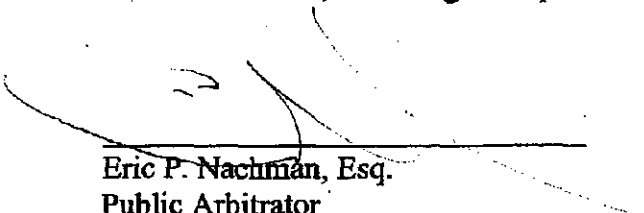
Hilary B. Miller, Esq.	-	Public Arbitrator, Presiding Chair
Eric P. Nachman, Esq.	-	Public Arbitrator
Matthew Loguercio	-	Non-Public Arbitrator

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.

Hilary B. Miller, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Eric P. Nachman, Esq.
Public Arbitrator



Signature Date

Matthew Loguercio
Non-Public Arbitrator

Signature Date

December 3, 2003

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Hilary B. Miller, Esq.	-	Public Arbitrator, Presiding Chair
Eric P. Nachman, Esq.	-	Public Arbitrator
Matthew Loguercio	-	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.

Hilary B. Miller, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Eric P. Nachman, Esq.
Public Arbitrator

Signature Date



Matthew Loguercio
Non-Public Arbitrator

12/1/03

Signature Date

December 3, 2003
Date of Service (For NASD Dispute Resolution use only)