

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

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In the Matter of the Arbitration Between:

John Armato d/b/a Armato Securities (Claimant) vs. Vincent Molinari, Joseph DeSena, and Burlington Capital Markets (Respondents)

Case Number: 02-05949

Hearing Site: New York, New York

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Nature of the Dispute: Non-Member vs. Associated Persons and Member

**REPRESENTATION OF PARTIES**

Claimant John Armato d/b/a Armato Securities hereinafter referred to as "Claimant": Kevin Conway, Esq., Conway & Conway, New York, NY.

Respondent Vincent Molinari ("Molinari"): Andrew J. Goodman, Esq., Kurzman Eisenberg Corbin Lever & Goodman, LLP, New York, NY.

Respondents Joseph DeSena ("DeSena") and Burlington Capital Markets ("Burlington") hereinafter referred to as the "Burlington Respondents": Jocelyn Jacobson, Esq., Lauren Kluger, Esq., Reitler Brown & Rosenblatt LLC, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: October 2, 2002.

Amended Statement of Claim filed on or about: August 23, 2005.

Claimant signed the Uniform Submission Agreement: December 1, 2002.

Statement of Answer filed by Molinari on or about: September 19, 2003.

Molinari did not submit a Uniform Submission Agreement.

Statement of Answer and Counterclaim filed by the Burlington Respondents on or about: September 19, 2003.

DeSena did not submit a Uniform Submission Agreement.

Burlington did not submit a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action in its Statement of Claim and Amended Statement of Claim: fraud, conversion, breach of contract, and negligence.

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

Unless specifically admitted in their Answer, the Burlington Respondents denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted various affirmative defenses.

In their Counterclaim, the Burlington Respondents asserted the following cause of action: commissions owed.

Unless specifically admitted in his Answer, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested compensatory damages in an amount in excess of \$307,427.00, pre-judgment and post judgment interest, costs, expert witness fees, attorneys' fees, punitive damages, and such other and further relief as the arbitrators deem appropriate under the circumstances. In the Amended Statement of Claim, Claimant requested \$5,565,182.90 in compensatory damages.

Respondent Molinari requested dismissal of the Statement of Claim in its entirety with prejudice, attorneys' fees, sanctions, and such other, further and different relief as the Panel deems just and proper.

The Burlington Respondents requested dismissal of the Statement of Claim in its entirety with prejudice and attorneys' fees.

In their Counterclaim, the Burlington Respondents requested payment of commissions in an unspecified amount plus interest.

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

Respondents Molinari, Desena and Burlington did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

During the hearing Respondent Molinari moved to dismiss the Statement of Claim. The Panel heard all oral arguments and after due deliberation granted Respondent Molinari's Motion to Dismiss.

During the hearing the Burlington Respondents moved to dismiss the Statement of Claim. The Panel heard all oral arguments and after due deliberation denied the Burlington Respondents' Motion to Dismiss.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be executed.

### **AWARD**

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

1. Respondent Burlington is liable for and shall pay to Claimant compensatory damages in the amount of \$7,919.00, representing the commission bills, plus interest at the rate of 9% per annum, beginning from October 2, 2002 until October 2, 2004.
2. Respondent Burlington is liable for and shall pay to Claimant compensatory damages in the amount of \$28,333.34, representing a one month seat lease, plus interest at the rate of 9% per annum, beginning from October 2, 2002 until October 2, 2004.
3. All claims against Respondent Molinari are dismissed in their entirety.
4. All claims against Respondent DeSena are dismissed in their entirety.
5. 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	= \$	600.00
Counterclaim filing fee	= \$	500.00

#### **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 persons at the time of the events giving rise to the dispute. Accordingly, Burlington Capital Markets is a party.

Member surcharge	= \$	3,350.00
Pre-hearing process fee	= \$	750.00
Hearing process fee	= \$	5,500.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

November 10,12,13,17,19, and 21, 2003 adjournment requested by Claimant	= \$	1,200.00
July 19-21, 2004 adjournment requested by the parties	=	Waived
May 1, 2006 adjournment requested by Claimant	= \$	1,500.00

### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

May 1, 2006 adjournment by Claimant = \$ 300.00

### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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) Decision on discovery-related motion on the papers  
with (1) one arbitrator @ \$200.00 = \$ 200.00

Three (3) Pre-hearing sessions with single arbitrator @ \$1,200.00 = \$ 3,600.00

Pre-hearing conferences: April 10, 2006 1 session  
April 14, 2006 1 session  
April 21, 2006 1 session

Eight (8) Pre-hearing sessions with Panel @ \$1,200.00/session = \$ 9,600.00

Pre-hearing conferences: September 3, 2003 1 session  
October 8, 2003 1 session  
November 5, 2003 1 session  
November 21, 2003 1 session  
December 19, 2003 1 session  
December 2, 2005 1 session  
April 28, 2006 1 session  
May 1, 2006 1 session

Eight (8) Hearing sessions @ \$1,200.00/session = \$ 9,600.00

Hearing Dates: May 2, 2006 2 sessions  
May 3, 2006 2 sessions  
May 9, 2006 3 sessions  
May 10, 2006 1 session

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Total Forum Fees = \$ 23,000.00

1. The Panel has assessed \$11,500.00 of the forum to Claimant.
2. The Panel has assessed \$11,500.00 of the forum to Respondent Burlington.

### **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.

1. The Burlington Respondents requested tapes = \$ 225.00

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
Adjournment Fees	= \$ 2,700.00
Three Day Rule Fees	= \$ 300.00
Forum Fees	= \$ 11,500.00
Total Fees	= \$ 15,100.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 13,675.00

2. Respondent Burlington is solely liable for:

Member Fees	= \$ 9,600.00
Forum Fees	= \$ 11,500.00
Total Fees	= \$ 21,100.00
Less payments	= \$ 9,690.00
Balance Due NASD Dispute Resolution	= \$ 11,410.00

3. Burlington Respondents are jointly and severally liable for:

Counterclaim Filing Fees	= \$ 500.00
Administrative Costs	= \$ 225.00
Total Fees	= \$ 725.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 725.00

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

**ARBITRATION PANEL**

Renee S. Rothschild, Esq.	-	Public Arbitrator, Presiding Chairperson
Thomas M. Crawford, Esq.	-	Public Arbitrator
Peter M. Pfau	-	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.



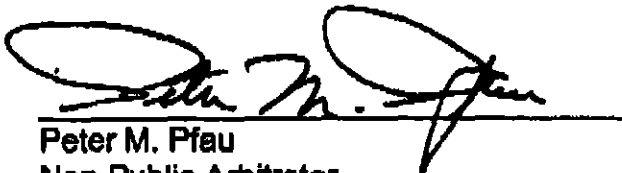
Renee S. Rothschild, Esq.  
Public Arbitrator, Presiding Chairperson

5/31/06  
Signature Date



Thomas M. Crawford, Esq.  
Public Arbitrator

6/01/06  
Signature Date



Peter M. Pfau  
Non-Public Arbitrator

June 5, 2006  
Signature Date

June 1, 2006

Date of Service (For NASD Dispute Resolution use only)