

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Gabriel Weisz (Claimant) v. Liberty Capital I, L.L.C., Jeffrey Dubowy, and Martin Rebhun (Respondents)

Case Number: 02-06000

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Gabriel Weisz ("Weisz") hereinafter referred to as "Claimant": David Crystal, II, Esq. and James P. Donohue, Jr., Esq., Gilbride, Tusa, Last & Spellane, LLC, New York, NY.

Respondents Liberty Capital I, L.L.C. ("Liberty"), Jeffrey Dubowy ("Dubowy"), and Martin Rebhun ("Rebhun") hereinafter collectively referred to as "Respondents": David E. Robbins, Esq., Kaufmann, Feiner, Yamin, Gildin & Robbins, LLP, New York, NY. Previously represented by: Thomas I. McCabe, Esq., McCabe & Flynn, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: October 8, 2002.

Reply to Counterclaims filed by Claimant on or about: December 18, 2002.

Claimant signed the Uniform Submission Agreement: October 7, 2002.

Joint Counterstatement of Facts, Answer, and Counterclaim filed by Respondents on or about: December 9, 2002.

Respondent Liberty signed the Uniform Submission Agreement: December 16, 2002.

Respondent Dubowy signed the Uniform Submission Agreement: December 15, 2002.

Respondent Rebhun signed the Uniform Submission Agreement: December 15, 2002.

CASE SUMMARY

Claimant asserted the following cause of action: Respondents utilized a kickback scheme with respect to charging excessive commissions in order to defraud Claimant out of earned income. Unless specifically admitted in his Reply to Counterclaims, Claimant denied the allegations made in the Counterclaims.

Unless specifically admitted in their Counterstatement of Facts, Answer, and Counterclaim, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In their Counterclaim, Respondents asserted the following causes of action: breach of

contract; negligence with respect to managing his Trading Account and positions; and engaging in conduct inconsistent with just and equitable principles of trade.

RELIEF REQUESTED

Claimant requested:

1. A full accounting from Respondents from the date of his hiring to the date of his termination, on the income and losses, and particularly the amount of money "kick-backed" or returned to the Respondents from FOC, regardless of its form;
2. Payment to Weisz of his rightful percentage of the "excess commissions" in an amount that will be determined by the accounting but believed to be in excess of \$650,000.00;
3. Proper adjustments to Weisz's trading account, for the amounts not properly credited and received from American Stock Exchange (\$6,175.68) and the Empire State Development Fund (an amount to be determined by the accounting but believed to be in excess of \$90,000.00 plus any future adjustments) and the improper removal of \$307.68, for a total of \$96,483.36 credit, leaving the correct balance in the account (before the accounting set forth above) of \$95,440.07 and to receive 65% of such amount totaling \$62,036.04;
4. Punitive damages in the amount of \$325,000.00 due to respondents' fraudulent acts and omissions;
5. Attorneys' fees;
6. Forum fees;
7. And for such other relief as this Panel may appear to be just and fair.

In his Reply to the Counterclaim, Claimant requested that the Arbitrators deny the Counterclaim, render an award in favor of Claimant as prayed for in the Statement of Claim and further award claimant attorneys' fees while charging Respondents with all costs and forum fees.

Respondents requested that the Panel dismiss the claims made against Respondents in their entirety and award Respondents compensatory damages in the amount of \$26,812.64, plus interest together with costs, including but not limited to, attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Liberty Capital I, LLC, Jeffrey Dubowy, and Martin Rebhun are members of the America Stock Exchange ("AMEX"). AMEX has an agreement with NASD Dispute Resolution to use NASD Dispute Resolution's forum. Under the agreement, members of AMEX and their associated persons are required to abide by and submit to arbitration at NASD Dispute Resolution.

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 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. Respondents are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$109,069.87, plus interest at the rate of 9% per annum from October 7, 2002 through October 19, 2004.
2. The Counterclaims of Respondents are denied in their entirety.
3. 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 | = \$500.00 |
| Counterclaim filing fee | = \$1,000.00 |

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 persons at the time of the events giving rise to the dispute. Accordingly, Liberty Capital I, L.L.C. is a party.

| | |
|-------------------------|--------------|
| Member surcharge | = \$2,800.00 |
| Pre-hearing process fee | = \$ 750.00 |
| Hearing process fee | = \$5,000.00 |

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

| | |
|--|--------------|
| March 1-2, 2004, joint adjournment request | = \$1,200.00 |
| Claimant's share | = \$600.00 |
| Respondents' share | = \$600.00 |

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:

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|---|---------------|
| One (1) Pre-hearing session with Panel @ \$1,200.00 | = \$ 1,200.00 |
| Pre-hearing conference: July 21, 2003 1 session | |
| Fifteen (15) Hearing sessions @ \$1,200.00 | = \$18,000.00 |
| Hearing Dates: March 8, 2004 2 sessions | |
| March 9, 2004 2 sessions | |

| | |
|--------------------|------------|
| March 15, 2004 | 2 sessions |
| July 20, 2004 | 2 sessions |
| July 21, 2004 | 2 sessions |
| September 28, 2004 | 2 sessions |
| September 29, 2004 | 2 sessions |
| October 19, 2004 | 1 session |

| | |
|------------------|---------------|
| Total Forum Fees | = \$19,200.00 |
|------------------|---------------|

1. The Panel has assessed \$9,600.00 of the forum fees against Claimant.
2. The Panel has assessed \$9,600.00 of the forum fees jointly and severally against Respondents.

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.

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| 1. Claimant requested duplication of hearing tapes | = \$300.00 |
| 2. Respondents requested duplication of hearing tapes | = \$300.00 |

Fee Summary

1. Claimant is solely liable for:

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|-------------------------------------|---------------|
| Initial Filing Fee | = \$ 500.00 |
| Adjournment Fee | = \$ 600.00 |
| Forum Fees | = \$ 9,600.00 |
| <u>Administrative Costs</u> | = \$ 300.00 |
| Total Fees | = \$11,000.00 |
| <u>Less payments</u> | = \$ 2,600.00 |
| Balance Due NASD Dispute Resolution | = \$ 8,400.00 |

2. Respondent Liberty is solely liable for:

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|-------------------------------------|---------------|
| <u>Member Fees</u> | = \$ 8,550.00 |
| Total Fees | = \$ 8,550.00 |
| <u>Less payments</u> | = \$ 5,000.00 |
| Balance Due NASD Dispute Resolution | = \$ 3,550.00 |

3. Respondents are jointly and severally liable for:

| | |
|-------------------------------------|---------------|
| Counterclaim Filing Fee | = \$ 1,000.00 |
| Adjournment Fee | = \$ 600.00 |
| Forum Fees | = \$ 9,600.00 |
| <u>Administrative Costs</u> | = \$ 300.00 |
| Total Fees | = \$11,500.00 |
| <u>Less payments</u> | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$11,500.00 |

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

NASD Dispute Resolution

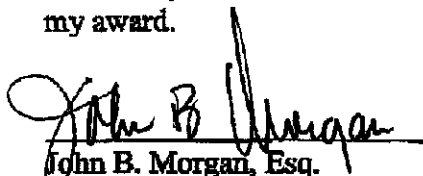
Arbitration No. 02-06000

Award Page 5 of 5**ARBITRATION PANEL**

| | | |
|----------------------|---|--|
| John B. Morgan, Esq. | - | Non-Public Arbitrator, Presiding Chairperson |
| Thomas Caiaffa | - | Non-Public Arbitrator |
| George Howard, III | - | 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 is which is my award.



John B. Morgan, Esq.
Non-Public Arbitrator, Presiding Chairperson

October 21, 2004
Signature Date

Thomas Caiaffa
Non-Public Arbitrator

Signature Date

George Howard, III
Non-Public Arbitrator

Signature Date

November 1, 2004

Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution
Arbitration No. 02-06000
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ARBITRATION PANEL

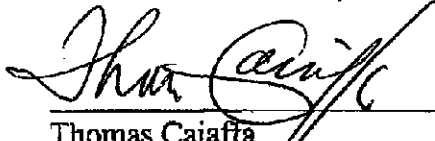
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Thomas Caiaffa
Non-Public Arbitrator

10/22/04

Signature Date

George Howard, III
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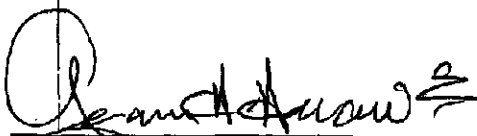
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Signature Date

Thomas Caiaffa
Non-Public Arbitrator

Signature Date



George Howard, III
Non-Public Arbitrator

10/22/04

Signature Date

November 1, 2004

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