

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant / Counter-Respondent

Leonard C. Demers

v.

02-06233

Minneapolis, Minnesota

Respondent / Counterclaimant

Roan-Meyers Associates, LP

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Nature of Dispute: Associated Person v. Member and Member v. Associated Person

**REPRESENTATION OF PARTIES**

Leonard C. Demers ("Claimant") was represented by Douglas C. Evans, Hillsdale, New Jersey.

Roan-Meyers Associates, LP ("Respondent") was represented by David A. Schrader, Esq., of Schrader & Schoenberg, LLP.

**CASE INFORMATION**

The Statement of Claim was filed on or about October 15, 2002. Submission Agreements of Claimant was signed on or about October 30, 2002.

A Statement of Answer was filed by Respondent Roan-Meyers Associates on or about December 23, 2002.

Respondent filed a Motion to Transfer Venue on or about September 26, 2003. Claimant filed a Response in Opposition on or about October 20, 2003. Respondent filed a Reply in Support of Motion to Transfer Venue on or about November 11, 2003.

Respondent filed a Motion to Disqualify Claimant's counsel on or about September 26, 2003. Claimant filed a Response in Opposition on or about October 14, 2003.

Respondent filed a Motion to Amend Answer to Assert a Counterclaim on or about November 11, 2003. Claimant filed a Response in Opposition on or about November 29, 2003.

Respondent filed a Motion to Preclude Claimant's counsel from testifying as a witness at the arbitration hearing on or about November 20, 2003. Claimant filed a Response in Opposition on or about December 2, 2003.

Respondent filed an Amended Statement of Answer and Counterclaim on or about December 19, 2003.

Claimant filed a Motion for Discovery Sanctions, Attorney's Fees and Regulatory Referral on or about December 4, 2003. Respondent filed a Response in Opposition on or about December 9, 2003.

Claimant filed a Second Motion For Discovery Sanctions on or about December 16, 2003.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract and defamation. The causes of action related to Claimant's allegation that Respondent unilaterally and unlawfully changed the terms of his employment contract, and as a result, forced Claimant to resign. Claimant also alleged that due to Respondent's bad-faith dealings, illegal activity in Claimant's customer accounts, and the breach of Claimant's employment contract, it discharged him from any obligation to repay the employment loan agreed upon with Respondent.

Respondent denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Respondent had a responsibility as an NASD member to reflect the breach of contract on Claimant's U-5. In Respondent's Counterclaim, it asserted the following cause of action: breach of contract. The cause of action related to the alleged breach of contract in regard to an employment loan upon Claimant's departure from Roan-Meyers Associates, LP.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$128,450 in compensatory damages, broken down as follows: \$23,900 for overdue commissions; double damages or another \$23,900 as required under New York Labor Laws, Article 6, Section 191 paragraph (c) 3; \$21,150 for stopping payments to Lisa Morea and then charging them to Claimant; \$30,600 for failing to pay Claimant's office expense; \$5,000 for failing to pay the additional monies agreed to. In addition Claimant requested \$10,000 in punitive damages, an additional twenty-five percent of wages found to be owed as liquidated damages as required under New York Labor Law, Article 6, Section 198, 1(a), attorney's fees, and expungement of all defamatory statement on Claimant's U-5 relating to his breach of contract, and any other relief that the Panel deemed just and equitable.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees. In Respondent's Counterclaim, it requested \$58,000 in compensatory damages in regard to a failure to honor an employment loan, interest and any other fees that the Panel deemed just and equitable.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent Roan-Meyers Associates, LP 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, appeared and testified through counsel at the hearing, is bound by the determination of the Panel on all issues submitted.

On or about November 19, 2003, the Panel denied Respondent's Motion to Transfer Venue and Motion to Disqualify Claimant's Counsel.

On or about December 19, 2003, the Panel denied Claimant's Motion for Sanctions, granted Respondent's Motion to Amend to Assert a Counterclaim, and granted Respondent's Motion to Preclude Claimant's Counsel from testifying as a witness at the arbitration hearing.

At the arbitration hearing, the Panel denied Claimant's Second Motion for Discovery Sanctions.

At the arbitration hearing, all parties agreed to the Panel's composition.

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 originals remain on file with NASD Dispute Resolution ("NASD").

#### **AWARD**

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

1. Claimant's claims, each and all, are denied and dismissed with prejudice;
2. Claimant, Leonard C. Demers, is liable for and shall pay to Respondent, Roan-Meyers Associates, LP, the sum of Fifty Thousand Dollars and No Cents (\$50,000.00) in damages relating to the employment loan asserted in the counterclaim;
3. Claimant, Leonard C. Demers, is liable for and shall pay to Respondent, Roan-Meyers Associates, LP, interest at the Minnesota statutory rate on the above stated sum from and including August 22, 2002 through and including the date this Award is paid in full;
4. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages and expungement, are denied with prejudice; and
5. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

#### **FEES**

Pursuant to the Code, the following fees are assessed:

##### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee	= \$ 300.00
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. In this matter, the member firm is Roan-Meyers Associates, LP.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

### Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with Panel x \$ 1,125.00	= \$ 3,375.00
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Pre-hearing conference:	04/30/2003	1 session
	11/14/2003	1 session
	12/11/2003	1 session

Four (4) Hearing sessions with Panel x \$ 1,125.00	= \$ 4,500.00
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Hearing Dates:	02/18/2004	2 sessions
	02/19/2004	2 sessions

<u>Total Forum Fees</u>	<u>= \$ 7,875.00</u>
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The Arbitration Panel has assessed \$ 3,937.50 of the forum fees to Leonard C. Demers

The Arbitration Panel has assessed \$ 3,937.50 of the forum fees to Roan-Meyers Associates, LP.

### Fee Summary

Claimant, Leonard C. Demers is liable for:

Initial Filing Fee	= \$ 300.00
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Forum Fees	= \$ 3,937.50
Total Fees	= \$ 4,237.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 2,812.50

Respondent, Roan-Meyers Associates, LP, is liable for:

Counterclaim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 3,937.50
Total Fees	= \$ 10,137.50
Less payments	= \$ 4,150.00
Balance Due NASD Dispute Resolution	= \$ 5,987.50

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

**ARBITRATION PANEL**

Richard A. Mosman, Esq. - Public Arbitrator, Presiding Chair  
D. Randall Blohm, Esq. - Public Arbitrator  
Roger D. Johnson- Non-Public Arbitrator

Concurring Arbitrators:

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Richard A. Mosman, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

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D. Randall Blohm, Esq.  
Public Arbitrator

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Signature Date

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Roger D. Johnson  
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Signature Date

3/17/04  
\_\_\_\_\_  
Date of Service (NASD use only)

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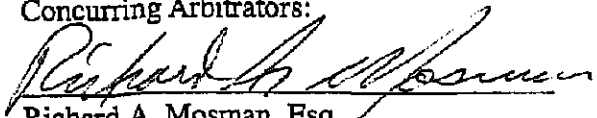
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Public Arbitrator

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Signature Date

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