

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Joseph A. Vento

v.

02-06391
Denver, Colorado

Respondent

Quick & Reilly, Inc.

Nature of Dispute: Associated Person v. Member

REPRESENTATION OF PARTIES

Joseph A. Vento ("**Claimant**") appeared pro se.

Quick & Reilly, Inc. ("**Respondent**") was represented by Matthew S. Diggins, Esq., of Quick & Reilly, New York City, New York until a Notice of Appearance was filed on or about November 12, 2003. After which, Respondent was represented by John H. Bernstein, Esq., of Kutak Rock LLP, Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about October 23, 2002. Submission Agreement of Claimant was signed on or about October 23, 2002.

Statement of Answer was filed by Respondent Quick & Reilly, Inc. on or about December 24, 2002. Submission Agreement of Respondent Quick & Reilly, Inc. was signed on or about December 24, 2002.

Respondent filed a Motion to Dismiss on or about July 2, 2003.

Claimant filed a Response to Respondent's Motion to Dismiss on or about July 26, 2003.

CASE SUMMARY

Claimant asserted causes of action including the following: conversion, violation of a court order, breach of fiduciary duty, negligence and failure to not disclose confidential information. The causes of action related to Claimant's allegation that Respondent improperly accepted a Writ of Garnishment that was incorrectly executed by a Court Clerk rather than a judge. Claimant stated that despite his request for Respondent not to comply with the allegedly invalid Writ, Respondent

dispersed funds from his accounts to the Clerk and disclosed personal information as a result of the compliance.

Respondent did not deny the allegations set forth in the Statement of Claim but asserted defenses that included the following: Respondent responded to an Writ of Garnishment with Notice of Exemption and Pending Levy from the District Court of Pueblo, Colorado. At the time, Q&R held monies in the account of Claimant, the judgment debtor in the court action. On or about March 9, 2000, Q&R received an Order granting Motion For Order Directing Payment of Funds to the Court and to Pay Out Funds Deposited With the Court. Respondent directed payment in the amount stated to the Clerk of the District Court that Respondent did not require the authority of Claimant to disburse these funds because Respondent's actions were in direct response to an Order from the Court Clerk in the competent jurisdiction.

RELIEF REQUESTED

Claimant requested an award in the amount of \$93,847.25 in compensatory damages. In addition, Claimant requested \$300,000 in punitive damages, interest, attorney's fees, costs, and such other relief that the Panel deemed fit and proper.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

On or about October 30, 2003 a pre-hearing conference was scheduled to address Respondent's Motion to Dismiss. Claimant did not appear at this hearing, having submitted an advisement on or about October 24, 2003, that he would not attend. During the conference, the Panel noted that Claimant had waived his right to attend and allowed Respondent to orally address its Motion to Dismiss. On October 31, 2003, the Panel ordered that the parties submit briefs, setting forth legal precedents to answer the following questions:

- (a) Does a broker-dealer in receipt of an order of a civil court, which order is valid on its face, have an obligation to investigate the validity of that order or may it merely accept the order as written?
- (b) During the proceedings, in the court that issued the Writ of Garnishment, did the Claimant file a motion to quash, motion for a protective order, writ of mandamus or similar document, or engage in argument, for the purpose of bringing the allegedly defective order to the attention of the actual court that ordered it?
- (c) If no such filing or oral argument occurred, is there a reason why and, if so, what was the reason?
- (d) Does failure to raise the issue of a defective order, before the underlying court issued it, divest a subsequent court or panel of arbitrators from having jurisdiction to consider this issue?

Claimant submitted a Brief in response to aforementioned questions on or about November 5, 2002. Respondent submitted its brief on or about November 12, 2003. The Panel issued an Order

dismissing this arbitration case on or about November 17, 2003, pursuant to Rule 10305 of the Code of Arbitration ("Code"), which Order stated as follows:

The parties filed motions, responses, and legal briefs, and these documents were fully reviewed and considered by the Panel. The Panel also heard oral argument from the Respondent at a hearing on the subject of Respondent's motion to dismiss. The Claimant refused to participate in oral argument, and, instead, relied upon written documents previously filed, and a new document entitled "Advisement". After considering the law and the facts presented by both parties, the Panel has determined that the complaint of Joseph Vento (heretofore referred to as "Vento") against Quick & Reilly, Inc. (heretofore referred to as "Q&R") cannot go forward.

Vento alleged that Q&R breached its fiduciary duty, acted negligently, and/or violated other standards of conduct or obligations to him when it accepted a Writ of Garnishment that had been issued by the Clerk of the Court of the Pueblo County District Court. We disagree.

Vento alleged that the writ was defective, because it had been issued by a Court Clerk, rather than a judge. Vento further alleged that he advised Q&R of the improper nature of the writ and asked them not to comply, but that they complied anyway, improperly disclosing personal information about his assets, and depositing a large sum of money with the Clerk of Court, rather than the Sheriff.

Q&R did not dispute the basic facts alleged by Vento and offered no opinion as to whether the writ was valid or invalid. Instead, it alleged that it was Vento's responsibility to dispute the validity of any writ in the underlying court that issued it. We agree.

Vento should have disputed the writ by filing a motion to quash with the judge of the same District Court that had allowed its Court Clerks to issue writs of garnishment. If that motion was denied, he could and should have filed a writ of mandamus with the Appeals Court, and, eventually, brought the matter to the attention of the Colorado Supreme Court. It is not the function of a subsequent court, or arbitration panel, to award damages arising out of a third-party's compliance with an invalid order or writ of garnishment. On the contrary, it is the duty of the person garnished to file a motion to quash a writ issuing improperly out of a court, or one of its functionaries (ie: the Clerk), if that person feels that the writ or order was issued under improper circumstances. Accordingly, we express no opinion as to whether the writ was invalid, as alleged by Vento, leaving that determination to its proper place in the court system of the State of Colorado.

The duty to timely file a motion to quash and subsequent appellate procedures, relating to an improper garnishment order, properly falls on the shoulders of the person garnished. It would impose unfair and unjustifiable costs upon innocent third parties, like Q&R, if that duty were placed upon them. By saying this, we do not imply that a broker-dealer has no duty at all, in this situation. It appears, however, that Vento was essentially demanding that Q&R either willfully violate what appeared to be a valid garnishment by simply not complying, or to expend attorney's fees and costs to oppose the garnishment by filing a motion to quash on his behalf. That is not within the scope of a broker-dealer's fiduciary duty to its customer.

It should be noted that the Arbitration Rules of Procedure call for automatic disclosure of certain documents in all cases. During the course of these proceedings, Q&R failed to comply with automatic disclosure. Q&R subsequently violated two explicit orders compelling discovery, and requiring it to deliver the documents to Vento. While this Panel is compelled to find in favor of Q&R as a matter of law, the system depends upon voluntary compliance with the rules, and a smooth interchange of discovery. We would ordinarily award costs to the prevailing party. Under the facts of this particular case, the Panel might even have considered the possibility of an award of attorney's fees in favor of the prevailing party. However, regardless of the result of the overall case, some degree of sanction must be imposed upon Q&R for willful violation of two duly issued orders and of the discovery rules generally. Accordingly, each party will bear its own costs and

attorney's fees.

AWARD

After considering the pleadings, oral arguments on the pre-hearing conference calls, and the briefs submitted by the parties, 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 hereby denied and dismissed with prejudice in their entirety pursuant to the November 17, 2003 Order;
2. 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, are denied with prejudice and;
3. 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

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. In this matter, the member firm is Quick & Reilly, Inc.

Member surcharge = \$ 1,700
Pre-hearing process fee = \$ 750
Hearing process fee = \$ 2,750

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$ 450 = \$ 450

Pre-hearing conference: 06/09/2003 1 session

Two (2) Pre-hearing sessions with Panel x \$ 1,125 = \$ 2,250

Pre-hearing conferences: 04/30/2003 1 session
10/30/2003 1 session

Total Forum Fees = \$ 2,700

The Arbitration Panel has assessed \$ 1,350 of the forum fees to Joseph A. Vento.

The Arbitration Panel has assessed \$ 1,350 of the forum fees to Quick & Reilly, Inc.

Fee Summary

Claimant, Joseph A. Vento is liable for:

Initial Filing Fee	= \$ 300
<u>Forum Fees</u>	= \$ 1,350
<u>Total Fees</u>	= \$ 1,650
<u>Less payments</u>	= \$ 1,425
Balance Due NASD Dispute Resolution	= \$ 225

Respondent, Quick & Reilly, Inc., is liable for:

Member Fees	= \$ 5,200
<u>Forum Fees</u>	= \$ 1,350
<u>Total Fees</u>	= \$ 6,550
<u>Less payments</u>	= \$ 5,200
Balance Due NASD Dispute Resolution	= \$ 1,350

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

ARBITRATION PANEL

Avery B. Goodman – Public Arbitrator, Presiding Chair
Gilbert M. Roman – Public Arbitrator
Martin M. Berliner, Esq.- Non-Public Arbitrator

Concurring Arbitrators:

Avery B. Goodman
Public Arbitrator, Presiding Chair

Signature Date

Gilbert M. Roman
Public Arbitrator

Signature Date

Martin M. Berliner, Esq.
Non-Public Arbitrator

Signature Date

12/4/03
Date of Service (NASD use only)

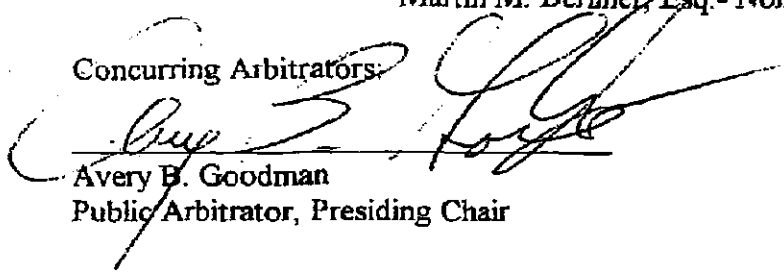
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Public Arbitrator, Presiding Chair

12/08/03
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Public Arbitrator

Signature Date

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Non-Public Arbitrator

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Public Arbitrator

12-8-03

Signature Date

Martin M. Berliner, Esq.
Non-Public Arbitrator

Signature Date

12/8/03

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Public Arbitrator

Signature Date



Martin M. Berliner, Esq.
Non-Public Arbitrator

12/08/03

Signature Date

12/14/03

Date of Service (NASD use only)