
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Harry Shoemaker, III

Case Number: 02-06461

Name of the Respondent
First Level Capital, Inc.

Hearing Site: New Orleans, LA

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Harry Shoemaker, III, hereinafter referred to as "Claimant": James L. Maughan, Esq., Maughan, Maughan & Lormand, LLC, Baton Rouge, LA.

For First Level Capital, Inc. ("FLC"), hereinafter referred to as "Respondent": Miles Hart, Esq., Hertz, Schram & Saretsky, P.C., Bloomfield Hills, MI.

CASE INFORMATION

Statement of Claim filed on or about: October 28, 2002.

Amended and Supplemental Statement of Claim filed on or about: December 5, 2003.

Claimant signed the Uniform Submission Agreement: October 23, 2002.

Statement of Answer filed by Respondent on or about: January 3, 2003.

Response to Claimant's Amended and Supplemental Statement of Claim filed by Respondent on or about: January 7, 2004.

Respondent signed the Uniform Submission Agreement: December 31, 2002.

Motion for Leave to File Amended and Supplemental Statement of Claim filed by Claimant on or about: December 15, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; breach of contract; fraud; failure to deal fairly and honestly; respondeat superior; and, gross negligence. The causes of action relate to Respondent's alleged concealment of the indictment and termination of the associated person that managed Claimant's account with Respondent.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages of approximately \$570,000.00, punitive damages of approximately \$1,140,000.00, costs, attorneys' fees, and all relief that is just and equitable.

Respondent requested dismissal of the Statement of Claim and all relief deemed appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

On or about December 29, 2003, the undersigned arbitrators (the "Panel") issued an order which granted Claimant's Motion to Amend Statement of Claim.

During the evidentiary hearing, Respondent made an ore tenus motion to dismiss and an ore tenus motion to adjourn. Claimant opposed both motions. Following the argument of counsel, the Panel denied the motions.

Prior to closing the evidentiary hearing, upon inquiry, Respondent's counsel stated that Respondent had a full and fair opportunity to be heard, but did not have a full and fair opportunity to obtain the discovery it needed to defend itself. The Panel's view was that Respondent had more than seven months to conduct discovery and prepare its defense. It was the Panel's further view that it was unfortunate that Respondent, who had been encouraged at the initial pre-hearing conference in June 2003 to retain counsel, did not retain able counsel until December 2003.

The parties 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 (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable and shall pay to Claimant compensatory damages in the sum of \$15,000.00 plus interest at the rate of 8.00% per annum from thirty days after the date of the Award until the date of payment of the Award.

Respondent is liable and shall pay to Claimant the sum of \$500.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein, including Claimant's requests for punitive damages and attorneys' fees, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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
--------------------------	-------------

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent is a member firm and a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were granted during these proceedings for which fees were assessed.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were assessed during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: August 25, 2003 1 session	
One (1) Pre-hearing session with the Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: June 20, 2003 1 session	
Four (4) Hearing sessions @ \$1,200.00	= \$4,800.00
Hearing Dates: January 12, 2004 2 sessions	
January 13, 2004 2 sessions	
Total Forum Fees	= \$6,450.00

The Panel has assessed the total forum fees of \$6,450.00 to Respondent.

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.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 500.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent is solely liable for:

<u>Member Fees</u>	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 6,450.00
<u>Total Fees</u>	= \$15,000.00
<u>Less payments</u>	= \$ 9,018.53
<u>Balance Due NASD Dispute Resolution</u>	= \$ 5,981.47

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

ARBITRATION PANEL

Ashley L. Belleau, Esq.	-	Public Arbitrator, Presiding Chairperson
Kurt D. Steiner, CPA	-	Public Arbitrator
Dale A. Kaliszeski	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Ashley L. Belleau, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

/s/
Kurt D. Steiner, CPA
Public Arbitrator

Signature Date

/s/
Dale A. Kaliszeski
Non-Public Arbitrator

Signature Date

January 27, 2004
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 02-06461
Award Page 4 of 5

of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 500.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent is solely liable for:


<u>Member Fees</u>	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 6,450.00
<u>Total Fees</u>	= \$ 15,000.00
<u>Less payments</u>	= \$ 9,018.53
<u>Balance Due NASD Dispute Resolution</u>	= \$ 5,981.47

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

ARBITRATION PANEL

Ashley L. Belleau, Esq.	-	Public Arbitrator, Presiding Chairperson
Kurt D. Steiner, CPA	-	Public Arbitrator
Dale A. Kaliszewski	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Ashley L. Belleau, Esq.
Public Arbitrator, Presiding Chairperson

1-26-04
Signature Date

Kurt D. Steiner, CPA
Public Arbitrator

Signature Date

NASD Dispute Resolution
Arbitration No. 02-06461
Award Page 4 of 5

of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
Total Fees	= \$ 500.00
Less payments	= \$ 500.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 6,450.00
Total Fees	= \$15,000.00
Less payments	= \$ 9,018.53
Balance Due NASD Dispute Resolution	= \$ 5,981.47

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

ARBITRATION PANEL

Ashley L. Belleau, Esq.	-	Public Arbitrator, Presiding Chairperson
Kurt D. Steiner, CPA	-	Public Arbitrator
Dale A. Kaliszeski	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

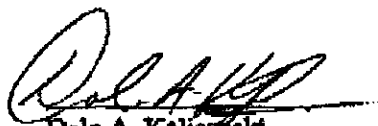
Ashley L. Belleau, Esq.
Public Arbitrator, Presiding Chairperson


Kurt D. Steiner, CPA
Public Arbitrator

Signature Date


Signature Date

NASD Dispute Resolution
Arbitration No. 02-06461
Award Page 5 of 5



Dale A. Kaliszewski
Non-Public Arbitrator

1/26/04
Signature Date

Date of Service (For NASD Dispute Resolution office use only)