

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

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In the Matter of the Arbitration Between:

Leerink, Swann, Garrity, Sollami, Yaffe & Wynn, Inc.

Case Number: 02-06502

vs.

Jason D. Smith

Hearing Site: Boston, MA

Member vs. Associated Person

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**REPRESENTATION OF PARTIES**

Claimant, Leerink, Swann, Garrity, Sollami, Yaffe & Wynn, Inc., hereinafter referred to as "Claimant": John I. Fitzgerald, Esq., Leerink, Swann & Company, Boston, MA.

Respondent, Jason D. Smith, hereinafter referred to as "Respondent" appeared *pro se*.

**CASE INFORMATION**

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

Claimant signed the Uniform Submission Agreement: October 28, 2002.

Respondent did not file a Statement of Answer or sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following cause of action: breach of contract.

**RELIEF REQUESTED**

Claimant requested an amount of \$56,500.00 in compensatory damages, interest calculated at 8.75%, to be adjusted to reflect those monies which have been forgiven, attorney's fees and disbursements and such other relief as the Panel finds appropriate.

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondent 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 appeared and testified at the hearing is bound by the determination of the Panel on all issues submitted.

During the hearing, the arbitrators and parties discussed Respondent's ability to pay the award. With the Claimant's consent, the arbitrators issued an award in favor of the Claimant and ordered that the award be paid according to the payment schedule reflected below.

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, 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 shall pay to Claimant a total of \$21,000.00 pursuant to the following payment schedule:
  - a. \$1,000.00 no later than November 14, 2003;
  - b. \$9,500.00 no later than March 1, 2004; and
  - c. \$10,500.00 no later than October 1, 2004.
2. 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	= \$ 1,000.00
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#### **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. Accordingly, Leerink, Swann, Garrity, Sollami, Yaffe & Wynn, Inc. is a party.

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,700.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the Panel, 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 the panel @ \$ 750.00 = \$ 750.00  
Pre-hearing conference: September 8, 2003 1 session

One (1) Hearing session @ \$ 750.00 = \$ 750.00  
Hearing Date: November 5, 2003 1 session

Total Forum Fees = \$ 1,500.00

1. The Panel has assessed \$ 750.00 of the forum fees against the Claimant.
2. The Panel has assessed \$ 750.00 of the forum fees against the Respondent.

**Fee Summary**

1. Claimant, Leerink, Swann, Garrity, Sollami, Yaffe & Wynn, Inc., is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 3,550.00
Forum Fees	= \$ 750.00
Total Fees	= \$ 5,300.00
Less payments	= \$ 3,600.00
Balance Due NASD Dispute Resolution	= \$ 1,700.00

2. Respondent, Jason D. Smith, is solely liable for:

Forum Fees	= \$ 750.00
Total Fees	= \$ 750.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 750.00

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

**ARBITRATION PANEL**

Francis C. Cleary, Jr., Esq. - Non-Public Arbitrator, Presiding Chair  
Robert H. Watts - Non-Public Arbitrator  
Dennis M. Cronin, Jr., Esq. - Non-Public Arbitrator

**Concurring Arbitrators' Signature(s)**

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.

Francis C. Cleary Jr.

Francis C. Cleary, Jr., Esq.  
Non-Public Arbitrator, Presiding Chairperson

November 12, 2003

Signature Date

\_\_\_\_\_  
Robert H. Watts  
Non-Public Arbitrator

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

\_\_\_\_\_  
Dennis M. Cronin, Jr., Esq.  
Non-Public Arbitrator

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

November 17, 2003  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**


Francis C. Cleary, Jr., Esq. - Non-Public Arbitrator, Presiding Chair  
Robert H. Watts - Non-Public Arbitrator  
Dennis M. Cronin, Jr., Esq. - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Francis C. Cleary, Jr., Esq.  
Non-Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Robert H. Watts  
Non-Public Arbitrator

Nov. 14, 2003  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Dennis M. Cronin, Jr., Esq.  
Non-Public Arbitrator

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

November 17, 2003  
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Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Francis C. Cleary, Jr., Esq. - Non-Public Arbitrator, Presiding Chair  
Robert H. Watts - Non-Public Arbitrator  
Dennis M. Cronin, Jr., Esq. - Non-Public Arbitrator

**Concurring Arbitrators' Signature(s)**

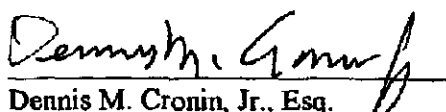
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Francis C. Cleary, Jr., Esq.  
Non-Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Robert H. Watts  
Non-Public Arbitrator

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

  
\_\_\_\_\_  
Dennis M. Cronin, Jr., Esq.  
Non-Public Arbitrator

11/12/03  
\_\_\_\_\_  
Signature Date

November 17, 2003  
Date of Service (For NASD Dispute Resolution use only)