

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Joseph Guerriero v. J.P. Turner & Company, LLC and John Columbia

Case Number: 02-06865

Hearing Site: New York, NY

REPRESENTATION OF PARTIES

Claimant Joseph Guerriero ("Guerriero"), hereinafter referred to as "Claimant" appeared *pro se* at the hearing. Up until August 26, 2003, represented by Leon Baer Borstein, Esq., Borstein & Sheinbaum, New York, New York.

Respondent J.P. Turner & Company, L.L.C. ("Turner"): Dianne L. Papierniak, J.P. Turner, New York, NY.

Respondent John Columbia ("Columbia") appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: November 11, 2002.

Claimant signed the Uniform Submission Agreement: September 6, 2002.

Statement of Answer filed by Respondent Turner on or about: January 10, 2003.

Respondent Turner did not submit a Uniform Submission Agreement.

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

Respondent Columbia signed the Uniform Submission Agreement: January 2, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of employment contract; failure to pay commissions due.

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

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

RELIEF REQUESTED

Claimant requested \$40,158.63 in damages that included:

1. The amount of commission earned and payable to Claimant but not paid by Respondent equal to \$30,891.63.
2. Pursuant to section 198 of the New York Labor Law, liquidated damages in the amount of 25% of unpaid compensation in the amount of \$9,267.00

plus interest and reasonable attorney's fees.

Respondent Turner requested that the Panel reject Claimant's Statement of Claim in its entirety as to Turner and order that all costs of this arbitration be borne by the Claimant.

Respondent Columbia requested that all claims against him be denied.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Turner 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, is bound by the determination of the Arbitrator on all issues submitted.

By letter dated August 26, 2003, Claimant withdrew and dismissed all claims against Respondent Turner.

During the hearing conducted on September 2, 2003, with Respondent and Arbitrator's consent, Claimant orally amended the amount of damages sought in the Statement of Claim to \$28,817.26 consisting of \$23,053.81 in commissions and \$5,763.45 as the alleged New York penalty plus interest and reasonable attorney's fees. This change was based upon a substitution of net commissions for gross commissions and a reduction of the dollar amount alleged as the New York statutory penalty because of the reduced amounts of commissions.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety.

2. Any and all relief not specifically addressed herein 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 = \$ 175.00

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 person at the time of the events giving rise to the dispute. Accordingly, J.P. Turner is a party.

Member surcharge = \$ 875.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$1,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

July 29 and 30, 2003, adjournment by Claimant = \$ 450.00

Forum Fees and Assessments

The Arbitrator 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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$ 450.00
Pre-hearing conference: May 20, 2003 1 session

One (1) Hearing sessions @ \$450.00 = \$ 450.00
Hearing Date(s): September 2, 2003 1 session

Total Forum Fees = \$ 900.00

1. The Arbitrator has assessed \$450.00 of the forum fees against Claimant Guerriero.
2. The Arbitrator has assessed \$300.00 of the forum fees against Respondent Columbia.
3. The Arbitrator has assessed \$150.00 of the forum fees against Respondent Turner.

Fee Summary

1. Claimant Guerriero is solely liable for:

Initial Filing Fee	= \$ 175.00
Adjournment Fee	= \$ 450.00
<u>Forum Fees</u>	<u>= \$ 450.00</u>
Total Fees	= \$1,075.00
<u>Less payments</u>	<u>= \$ 625.00</u>
Balance Due NASD Dispute Resolution	= \$ 450.00

2. Respondent J.P. Turner is solely liable for:

Member Fees	= \$ 2,625.00
<u>Forum Fees</u>	<u>= \$ 150.00</u>
Total Fees	= \$ 2,775.00
<u>Less payments</u>	<u>= \$ 2,625.00</u>
Balance Due NASD Dispute Resolution	= \$ 150.00

4. Respondents Columbia is solely liable for:

<u>Forum Fee</u>	<u>= \$ 300.00</u>
Balance Due NASD Dispute Resolution	= \$ 300.00

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

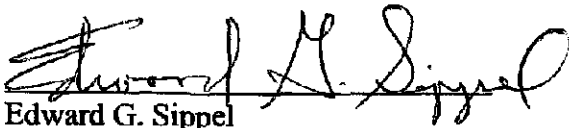
ARBITRATION PANEL

Edward G. Sippel

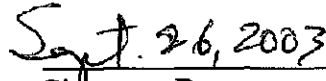
- Non-Public Arbitrator, Presiding Chair

Concurring Arbitrator's Signature

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.


Edward G. Sippel

Non-Public Arbitrator, Presiding Chairperson


Signature Date

September 30, 2003

Date of Service (For NASD Dispute Resolution use only)