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

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In the Matter of the Arbitration Between:

Name of the Claimant

Marc A. Schoen

Case Number: 02-07020

Names of the Respondents

R. K. Grace & Company

John Kaweske

Cardinal Capital Management, Inc.

Cardinal Capital Net, Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Associated Person vs. Member, Associated Person and Non-Member.

**REPRESENTATION OF PARTIES**

For Marc A. Schoen, hereinafter referred to as "Claimant": David A. Friedman, Esq., Fowler White Burnett, P.A., Ft. Lauderdale, Florida.

For John Kaweske, hereinafter referred to as "Respondent Kaweske": Stephen A. Mendelsohn, Esq., Greenberg Traurig, P.A., Boca Raton, Florida.

R. K. Grace & Company, hereinafter referred to as "Respondent Grace", did not appear.

For Respondent Cardinal Capital Management, Inc., hereinafter referred to as "Respondent CCM": Nancy Van Sant, Esq., Sacher, Zelman, Van Sant, Paul, Beiley, Hartman, Terzo, Rolnick & Walderman, P.A., Miami, Florida through November 12, 2004; Delmer C. Gowing III, Esq., Law Office of Delmer C. Gowing, III, Ocean Ridge, Florida through March 10, 2005; Hershel F. Smith, Jr., Custodian of Records, CCM, Miami, Florida.

For Respondent Cardinal Capital Net, Inc, hereinafter referred to as "Respondent CCN": Nancy Van Sant, Esq., Sacher, Zelman, Van Sant, Paul, Beiley, Hartman, Terzo, Rolnick & Walderman, P.A., Miami, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: November 20, 2002.

Claimant signed the Uniform Submission Agreement: November 19, 2002.

Motion to Dismiss and Answer to Statement of Claim filed by Respondent Kaweske on or about: January 17, 2003.

Respondent Kaweske signed the Uniform Submission Agreement: January 17, 2003.

Respondent CCM and Respondent CCN's [joint] Motion to Dismiss filed on or about: January 28, 2003.

Respondent CCM signed the Uniform Submission Agreement: May 15, 2003.

Respondent CCM and Respondent CCN's [joint] Answer to Statement of Claim filed on or about: May 27, 2003.

Respondent CCN did not file an executed Uniform Submission Agreement.

### **CASE SUMMARY**

Claimant asserted the cause of action of breach of contract. The cause of action relates to allegedly unpaid commissions due Claimant when his business relationship with Respondents ended.

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

Unless specifically admitted in their Answer, Respondents CCM and CCN denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested unspecified compensatory damages; pre-judgment interest at the statutory rate; attorneys' fees; costs; and, such other and further relief that the Panel deemed just and proper. Claimant also requested a final judgment providing injunctive relief enjoining and restraining Respondents, their officers, agents, servants, affiliates, employees, attorneys, successors, assigns and all others in concert and privity with them directly or indirectly, from the following: (1) contacting Claimant's customers and clients concerning business, securities transactions, or any transactional matters; (2) attempting to redirect or to encourage others to redirect the business of Claimant's customers and clients to other agents of Respondent Grace, CCM or CCN or any other entity in which Respondent Kaweske is principal; (3) interfering with Claimant's existing contractual relations; (4) reassigning the accounts of Claimant to other agents of Respondents Grace, CCM or CCN or any other entity in which Respondent Kaweske is principal; and, (5) for such other and further injunctive relief as may be appropriate. Claimant further requested that the Panel order Respondents to produce an accounting: (A) identifying all transactions since January 1, 2000, involving the customers and clients of Claimant, the date of each transaction, the nature of each transaction, and the value of each transaction; (B) for all commissions due to Claimant for said transactions, the date each commission accrued and the amount of each such commission; and (C) for all commissions paid to other agents or persons for said transactions, the date of each such payment, and the amount of each such payment.

Respondent Kaweske requested that the Panel dismiss this case and grant him his legal fees.

Respondents CCM and CCN requested the Panel enter an order dismissing Claimant's Statement of Claim. In addition, Respondents CCM and CCN requested an award of attorneys' fees and costs, as well as any other relief that the Panel deemed appropriate.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On or about April 28, 2004, the Panel issued an Order that granted Respondent CCN's Motion to Dismiss and denied Respondents Kaweske and CCM's Motions to Dismiss. Additionally, the Panel further dismissed Claimant's request for injunctive relief.

Respondents Grace and CCM did not appear at the evidentiary hearing on February 13, 2006. Upon review of the file and the representations made by Claimant, the undersigned arbitrators (the "Panel") determined that Respondents Grace and CCM have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Although Respondent CCM did not appear at the evidentiary hearing conducted on February 13, 2006, Respondent CCM is required to submit to arbitration pursuant to the Code, and, having filed a Statement of Answer and a properly executed Uniform Submission Agreement, is bound by the determination of the Panel on all issues submitted.

Respondent Grace did not file with NASD Dispute Resolution ("NASD") a properly executed submission to arbitration or otherwise appear in this matter, but is required to submit to arbitration pursuant to the Code, and is bound by the determination of the Panel on all issues submitted.

Respondent CCN is a non-member of NASD. Respondent CCN submitted to arbitration having filed a Statement of Answer. Therefore, Respondent CCN is bound by the determination of the Panel on all issues submitted.

At the outset of the evidentiary hearing, an arbitrator withdrew from the Panel. Thereafter, the parties present agreed to proceed with the two undersigned arbitrators.

At the outset of the evidentiary hearing, Claimant and Respondent Kaweske stipulated to dismiss Respondent Kaweske from this case, without prejudice. Additionally, Claimant informed the Panel that all claims against Respondent Grace were dismissed, without prejudice, which was accepted by the Panel.

During the evidentiary hearing, Claimant restated his request for Respondent CCM to produce accounting records to determine if Respondent CCM owed Claimant any additional monies. Thereafter, the Panel deliberated and determined to deny the Claimant's request.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent CCM is liable on the claim of breach of contract. Respondent CCM shall pay to Claimant compensatory damages in the amount of \$80,575.00, plus pre-judgment interest accruing from December 31, 2003, until the date of payment of the Award at a rate of 5% per annum.

Claimant's request for attorneys' fees is granted. Accordingly, Respondent CCM shall reimburse Claimant in an amount to be determined by a court of appropriate jurisdiction.

Respondent CCM shall pay to Claimant the sum of \$250.00, representing reimbursement of the non-refundable claim filing fee previously paid by Claimant to the NASD.

Any and all claims for relief not specifically addressed herein are 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 = \$ 250.00

#### **Member Fees**

Respondent CCM is not presently a member firm of NASD. However, Respondent CCM was a member at the time of the events giving rise to the dispute. Accordingly, the following member fees are assessed to Respondent CCM:

Member surcharge = \$1,500.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,200.00

Total Member Fees = \$4,450.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

September 3-4, 2003, adjournment requested by Respondents CCN and CCM = \$1,000.00

The Panel waived the total fee of \$1,000.00, for this adjournment.

November 30, 2004 – December 1, 2004, adjournment requested by Claimant = \$1,000.00

The Panel waived the total fee of \$1,000.00, for this adjournment.

October 24-25, 2005, adjournment requested by Claimant = \$1,500.00

The Panel assessed an adjournment fee of \$750.00 to Claimant.

The Panel assessed an adjournment fee of \$750.00 to Respondents Grace, Kaweske and CCM, jointly and severally.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

#### **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 incurred in this matter.

**Forum Fees and Assessments**

The Panel 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:

Four (4) Pre-hearing sessions with Panel @ \$1,000.00/session	= \$4,000.00
Pre-hearing conferences:	
May 9, 2003	1 session
September 3, 2003	1 session
January 8, 2004	1 session
April 28, 2004	1 session
One (1) Hearing session @ \$1,000.00/session	= \$1,000.00
Hearing Date:	February 13, 2006 1 session
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Total Forum Fees	= \$5,000.00

The Panel assessed the total forum fees of \$5,000.00 to Respondent CCM.

**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 in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 250.00
<u>Adjournment Fee</u>	= \$ 750.00
Total Fees	= \$ 1,000.00
<u>Less payments</u>	= \$ 1,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent CCM is solely liable for:

Member Fees	= \$ 4,450.00
<u>Forum Fees</u>	= \$ 5,000.00
Total Fees	= \$ 9,450.00
<u>Less payments</u>	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 5,000.00

Respondents Grace, Kaweske and CCM are jointly and severally liable for:

<u>Adjournment Fee</u>	= \$ 750.00
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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**

Gary M. Landau, Esq.	-	Public Arbitrator, Presiding Chairperson
Susan L. Torbin, MS, CFP	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Gary M. Landau, Esq.  
Public Arbitrator, Presiding Chairperson

February 16, 2006  
Signature Date

/s/  
Susan L. Torbin, MS, CFP  
Non-Public Arbitrator

February 17, 2006  
Signature Date

February 17, 2006  
Date of Service (For NASD Dispute Resolution office use only)

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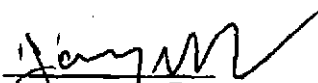
Total Fees	= \$ 750.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 750.00

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ARBITRATION PANEL

Gary M. Landau, Esq.	-	Public Arbitrator, Presiding Chairperson
Susan L. Torbin, MS, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
 Gary M. Landau, Esq.  
 Public Arbitrator, Presiding Chairperson

Feb 16, 2006  
 Signature Date

Susan L. Torbin, MS, CFP  
 Non-Public Arbitrator

                      
 Signature Date

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

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

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ARBITRATION PANEL

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Susan L. Torbin, MS, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Gary M. Landau, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Susan L. Torbin  
Susan L. Torbin, MS, CFP  
Non-Public Arbitrator

2/17/2006  
Signature Date

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