

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE:02-07027

John Armato, Claimant vs. Eric Citrin and EarlyBird Capital, Inc., Respondents.

ATTORNEYS:

Claimant, John Armato, ("Claimant"), appeared pro se, Katonah, NY.

For Respondents, Eric Citrin and EarlyBird Capital, Inc.,(collectively "Respondents"), appeared Meredith Rosen Cavallaro of the firm Paduano & Weintraub LLP, New York, NY.

DATE FILED: November 20, 2002

CASE SUMMARY: Claimant alleged that Respondents have failed to pay an amount owed on an outstanding commission bill for orders executed as a commission broker for the Respondents. Claimant maintained that due to Respondents' actions, he suffered losses.

Claim Data

Claim: \$9,225.50
Filing Fees: \$325.00
Other: Unspecified

Award Data

Award: \$.00
Filing Fees: \$162.50
Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of Claimant are dismissed in their entirety. 2) All other relief requests are denied. 3) The \$325.00 filing fee previously deposited with NASD Dispute Resolution by the Claimant, shall be retained by NASD Dispute Resolution. 4) Respondents are liable and shall pay Claimant \$162.50 as reimbursement of one-half of the filing fee.

OTHER ISSUE: Arbitrator's Decision Exhibit A.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent, EarlyBird Capital Inc. has paid to NASD Dispute Resolution the \$325.00 Member Surcharge previously invoiced.

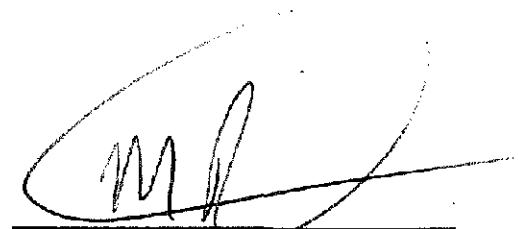
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Award 02-07027

Matthew D. Parrott, Esq.

Sole Non-Public Arbitrator

AFFIRMATION

I, Matthew D. Parrott, Esq., 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.

A handwritten signature in dark ink, appearing to be 'M. Parrott', is written over a horizontal line.

Matthew D. Parrott, Esq.

10/24/03

Signature Date

October 29, 2003
Date of Service (For NASD-DR office use only)

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between:

----- X
JOHN ARMATO d/b/a ARMATO SECURITIES

Claimant,

and

ERIC CITRIN AND EARLYBIRD CAPITAL,

Respondents.
----- X

ARBITRATOR'S DECISION

Case No. 02-07027

PROCEDURAL BACKGROUND:

The statement of claim was filed on November 18, 2002

Although the Claimant filed a uniform submission agreement on November 18, 2002, neither of the Respondents filed a uniform submission agreement

A prehearing conference was held on August 11, 2003, and was attended by representatives for all parties

The answer to statement of claim was filed on behalf of both Respondents on September 3, 2003

FACTUAL BACKGROUND:

Claimant, a broker who executed trades on behalf of Respondents between 1999 and 2002, alleged in the November 18, 2002 statement of claim that Respondents improperly failed to pay him \$9,550.50 in commissions owed for his services. At an August 11, 2003 prehearing conference, the Respondents appeared for the first time and asserted that they had paid Claimant \$9,225.50 in two separate payments of \$4,612.75 each, made respectively on January 10, 2003 and February 3, 2003 in full settlement of Claimant's allegations set forth in the statement of claim. Despite these payments, Claimant contended at the prehearing conference that he was entitled to filing fees, accountant fees and legal fees associated with the filing of the statement of claim, as well as interest on the sums owed from the date the bills became due through the date of the payments.

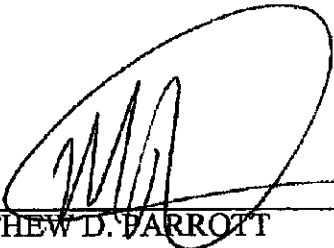
Subsequent to the August 11, 2003 prehearing conference, Respondents filed their answer to the statement of claim, along with a counterclaim for attorney fees. Respondents asserted that the two \$4,612.75 payments were made pursuant to an oral settlement agreement, but that Claimant had unreasonably refused to sign a release in breach of their oral agreement. Respondents further asserted that Claimant should be required to pay their legal fees in connection with the filing of the answer based on Claimant's refusal to sign a release pursuant to the purported settlement agreement.

Claimant never filed any response to Respondents' request for attorney fees, nor did Claimant submit any statement denying that a settlement agreement had been made as alleged by Respondents.

DECISION:

The claims asserted in the statement of claim are denied in their entirety. Respondents' request for attorneys fees is denied. NASD fees will be shared equally by the parties. Any and all claims not expressly addressed in this decision are denied.

Dated: October 6, 2003


MATTHEW D. PARROTT