

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robert Bordash (Claimant) vs. Roberston Stephens, Inc (Respondent)

Case Number: 02-07362

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant Robert Bordash , hereinafter referred to as "Claimant": Jonathan Sack, Esq., Sack & Sack, New York, NY.

Respondent Roberston Stephens, Inc., hereinafter referred to as "Respondent": Mary P. Cohn, Esq., Bingham McCutchen LLP, Boston, MA.

CASE INFORMATION

Statement of Claim filed on or about: December 4, 2002.

Letter Brief in Support of a Decision to Take Up Issues of Summary Judgment After Presentation of Evidence filed by Claimant on or about: April 16, 2003.

Claimant signed the Uniform Submission Agreement: December 13, 2002.

Statement of Answer and Motion to Dismiss filed by Respondent on: March 7, 2003.

Reply to Claimant's Letter Brief filed by Respondent on or about: May 1, 2003.

Respondent signed the Uniform Submission Agreement: April 18, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; breach of implied contract; quantum meruit-unjust enrichment and violation of New York Labor Law.

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

RELIEF REQUESTED

Claimant requested the balance of his unpaid contractual bonus compensation; the pro rata portion of his earned 2002 bonus compensation; pursuant to the Labor Law 25% in liquidated damages; punitive damages; and attorney's fees, costs, interest and any other relief the panel deems just and proper.

Respondent requested that the Statement of Claim be dismissed in its entirety with prejudice, that the costs and expenses be assessed against Claimant, and such other relief as the Arbitration Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

A telephonic pre-hearing conference with the arbitrators and parties was conducted on August 19, 2003 to hear oral arguments regarding Respondent's Motion to Dismiss.

After reviewing all submissions, considering all oral arguments and, due deliberation, the Panel decided that the employment contract signed by the Claimant controls which payments the Claimant is entitled to during his period of employment with Respondent. The Panel also determined that it is unambiguous that the closing of the Respondent firm was not a "change in control" as defined by the contract. Therefore, the Panel concluded that Claimant is not entitled to any further payment from Respondent.

In addition, the Panel held that the parole evidence rule prohibits the Claimant from presenting any evidence of oral agreements or discussions that would be in conflict with the clear and unambiguous terms of the written contract he signed.

Therefore, based upon the above, the Panel determined that no additional factual evidence was required and that Respondent's Motion to Dismiss is granted.

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. Claimant's claims are hereby dismissed, with prejudice, in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, 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

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, Robertson Stephens, Inc is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @ \$1,000.00	= \$2,000.00
Pre-hearing conference: July 16, 2003	1 session
August 19, 2003	1 session
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Total Forum Fees	= \$2,000.00

1. The Panel has assessed \$1,000.00 of the forum fees against Claimant.
2. The Panel has assessed \$1,000.00 of the forum fees against Respondent.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 250.00
<u>Forum Fees</u>	= \$ 1,000.00
Total Fees	= \$ 1,250.00
<u>Less payments</u>	= \$ 1,500.00
Refund Due Claimant	= \$ 250.00
2. Respondent is solely liable for:

Member Fees	= \$ 4,450.00
<u>Forum Fees</u>	= \$ 1,000.00
Total Fees	= \$ 5,450.00
<u>Less payments</u>	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 1,000.00

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

ARBITRATION PANEL

Dennis M. Pape, Esq	- Non-Public Arbitrator, Presiding Chair
Edward N. Gioiella, Esq	- Non-Public Arbitrator
AnnMarie Miller	- Non-Public Arbitrator

Concurring Arbitrators' Signatures

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.



Dennis M. Pape, Esq
Non-Public Arbitrator, Presiding Chairperson

9/5/2003

Signature Date

Edward N. Gioiella, Esq
Non-Public Arbitrator

Signature Date

AnnMarie Miller
Non-Public Arbitrator

Signature Date

September 11, 2003

Date of Service (For NASD Dispute Resolution use only)

ABITRATION PANEL

Dennis M. Pape, Esq	- Non-Public Arbitrator, Presiding Chair
Edward N. Gioiella, Esq	- Non-Public Arbitrator
AnnMarie Miller	- Non-Public Arbitrator

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Dennis M. Pape, Esq
Non-Public Arbitrator, Presiding Chairperson

Signature Date



Edward N. Gioiella, Esq
Non-Public Arbitrator

9/8/03

Signature Date

AnnMarie Miller
Non-Public Arbitrator

Signature Date

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Non-Public Arbitrator, Presiding Chairperson

Signature Date

Edward N. Gioiella, Esq.
Non-Public Arbitrator

Signature Date

AnnMarie Miller, MPA, LUTCF

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