

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Trident Partners, (Claimant) v. American Capital Partners, LLC, James Dolan, Daniel Dvorznak, Nicholas Tsikitas, Kenneth Severinsen, Anthony Salamone, and Thomas Allegra, (Respondents)

Case Number: 02-07383

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Trident Partners, hereinafter referred to as "Claimant": Eugene L. Small, Esq., Alonso, Andalkar & Kahn, P.C., New York, NY.

Respondents, American Capital Partners, LLC ("American"), James Dolan ("Dolan"), Daniel Dvorznak ("Dvorznak"), Nicholas Tsikitas ("Tsikitas"), Kenneth Severinsen ("Severinsen"), Anthony Salamone ("Salamone") and Thomas Allegra ("Allegra"), hereinafter collectively referred to as "Respondents": J. Christopher Albanese, Esq., American Capital Partners, LLC, Hauppauge, NY.

CASE INFORMATION

Statement of Claim filed on or about: December 13, 2002.

Response to Respondents' Counterclaims and Motion to Dismiss filed by Claimant on or about: February 3, 2003.

Claimant signed the Uniform Submission Agreement: December 4, 2002.

Statement of Answer filed by Respondents on or about: January 22, 2003.

Motion to Dismiss filed by Respondents American, Allegra, and Salamone filed on or about January 22, 2003.

Counterclaim filed by Respondents Dolan, Dvorznak, Tsikitas, Severinsen, Salamone, and Allegra on or about: January 22, 2003.

Respondent American did not sign the Uniform Submission Agreement.

Respondent Dolan did not sign the Uniform Submission Agreement.

Respondent Dvorznak did not sign the Uniform Submission Agreement.

Respondent Tsikitas did not sign the Uniform Submission Agreement.

Respondent Severinsen did not sign the Uniform Submission Agreement.

Respondent Salamone did not sign the Uniform Submission Agreement.

Respondent Allegra did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of employment contract, breach of fiduciary duty, tortious interference with economic relationships, conversion, breach of implied covenant of good faith and fair dealing, raiding, and immediate preliminary injunction.

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

In their Counterclaim, Respondents Dolan, Dvorznak, Tsikitas, Severinsen Salamone, and Allegra asserted the following causes of action: conversion, unjust enrichment, fraudulent U-5 filing, interference with regulatory action, and hostile work environment.

Unless specifically admitted in its Response, Claimant denied the allegations made in Respondents' Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in an amount to be determined at the hearing;
2. Punitive damages in an amount to be determined at the hearing;
3. A permanent injunction against Respondents pursuant to the terms of the Employment Agreements signed by the individual Respondents;
4. An award of all its legal fees incurred in connection with prosecuting this arbitration pursuant to the terms of the Employment Agreements signed by each of the individual Respondents;
5. Such other and further relief as the Panel deems just and proper.

Respondents requested that Claimant's claim be denied in its entirety, and that all Respondents be dismissed from this action, or in the alternative dismiss Respondents Allegra, Salamone, and American.

In their Counterclaim, Respondents Dolan, Dvorznak, Tsikitas, Severinsen, Salamone, and Allegra requested compensatory damages in excess of \$70,000.00 representing pay for the months of November and December 2002; and an opportunity to reclaim their personal property that was withheld by Claimant against Respondents' will since their dismissal.

In its Response, Claimant requested that Respondents' Motion to Dismiss and Counterclaim be denied in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On December 12, 2002, Justice Leonard B. Austin of the Supreme Court of the State of New York issued a temporary restraining order against Respondents. On January 3, 2003, an injunctive hearing was held to decide Claimant's request for a permanent injunction. The Panel granted Claimant's request except with respect to the account transfers listed on Claimant's Exhibit 1 (Names #1-21). The permanent injunction became effective immediately and will expire on December 3, 2003.

By letter dated March 10, 2003, Claimant advised NASD Dispute Resolution that it was withdrawing its' claims against Respondent Allegra, with prejudice.

On June 9, 2003, Claimant filed a Motion for Default Judgment and Motion for Sanctions. Respondents filed a response on June 9, 2003. After due consideration, the Panel denied the Motion for Default Judgment and deferred judgment on Claimant's Motion for Sanctions until after entertaining oral arguments from the parties at the hearing.

The Panel dismissed with prejudice all of Claimant's claims against Respondent Salamone.

Respondents American, Dolan, Dvorznak, Tsikitas, Severinsen, Salamone, and Allegra did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing are bound by the determination of the Panel on all issues submitted.

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. Respondents American, Dolan, Dvorznak, Tsikitas, and Severinsen are jointly and severally liable for and shall pay to Claimant the sum of \$278,400.00 as compensatory damages.
2. Respondents American, Dolan, Dvorznak, Tsikitas, and Severinsen are jointly and severally liable for and shall pay to Claimant the sum of \$5,000.00 as sanctions.

3. The permanent injunction against Respondents issued on January 3, 2003 shall remain in full force and effect as per prior Order.
4. Claimant is liable for and shall pay to Respondent Salamone the sum of \$2,913.00 as compensatory damages.
5. Claimant is liable for and shall pay to Respondent Dvorznak the sum of \$14,036.00 as compensatory damages.
6. Claimant is liable for and shall pay to Respondent Dolan the sum of \$4,334.00 as compensatory damages.
7. Claimant is liable for and shall pay to Respondent Severinsen the sum of \$8,491.00 as compensatory damages.
8. Claimant is liable for and shall pay to Respondent Tsikitas the sum of \$4,822.00 as compensatory damages.
9. Claimant is liable for and shall pay to Respondent Dvorznak the sum of \$358.00 as compensation for office furniture withheld from said Respondent.
10. 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
Counterclaim filing fee	= \$ 225.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Trident Partners and American Capital Partners, LLC are parties.

<u>Trident Partners</u>	
Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

American Capital Partners, LLC

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

April 10, 11, 24, 25, 28, 2003, adjournment by American = WAIVED

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.

1. Trident Partners is assessed:
Injunctive relief surcharge = \$2,500.00
Additional arbitrator honoraria = \$ 312.50
2. Respondents American, Dolan, Dvorznak, Tsikitas, Severinsen, Salamone, and Allegra are assessed:
Additional arbitrator honoraria = \$ 312.50

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 conferences:	
December 27, 2002	1 session
April 17, 2003	1 session
Two (2) Injunctive Hearing Sessions @1,000.00	= \$2,000.00
Hearing Dates:	
January 3, 2003	2 sessions
Eleven (9) Hearing sessions @ \$1,000.00	= \$9,000.00
Hearing Dates:	
May 28, 2003	2 sessions
May 29, 2003	2 sessions
July 9, 2003	2 sessions
July 10, 2003	2 sessions
July 11, 2003	1 session

Total Forum Fees = \$13,000.00

1. The Panel has assessed \$6,500.00 of the forum fees against Claimant.
2. The Panel has assessed \$6,500.00 of the forum fees jointly and severally against Respondents American, Dolan, Dvorznak, Tsikitas, and Severinsen.

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.

1. Respondent American, requested copies of hearing tapes = \$150.00
2. Respondents, requested copies of correspondence for hearing = \$ 14.00

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 4,450.00
Injunctive Relief Fees	= \$ 2,812.50
<u>Forum Fees</u>	<u>= \$ 6,500.00</u>
Total Fees	= \$14,262.50
<u>Less payments</u>	<u>= \$ 8,450.00</u>
Balance Due NASD Dispute Resolution	= \$ 5,812.50
2. Respondent American is solely liable for:

Member Fees	= \$ 4,450.00
<u>Administrative Costs</u>	<u>= \$ 150.00</u>
Total Fees	= \$ 4,600.00
<u>Less payments</u>	<u>= \$ 4,450.00</u>
Balance Due NASD Dispute Resolution	= \$ 150.00
3. Respondents Dolan, Dvorznak, Tsikitas, Severinsen, Salamone, and Allegra are jointly and severally liable for:

<u>Counterclaim filing fee</u>	<u>= \$225.00</u>
Balance Due NASD Dispute Resolution	= \$225.00
4. Respondents American, Dolan, Dvorznak, Tsikitas, Severinsen, Salamone, and Allegra are jointly and severally liable for:

<u>Injunctive Relief Fees</u>	<u>= \$312.50</u>
Balance Due NASD Dispute Resolution	= \$312.50

5. Respondents American, Dolan, Dvorznak, Tsikitas, and Severinsen, are jointly and severally liable for:

Administrative Costs	= \$ 14.00
<u>Forum Fees</u>	<u>= \$6,500.00</u>
Balance Due NASD Dispute Resolution	= \$6,514.00

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

ARBITRATION PANEL

Elizabeth Gilbert, Esq.	-	Public Arbitrator, Presiding Chair
Anthony Michael Sabino, Esq.	-	Public Arbitrator
Jean C. Black	-	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 in which is my award.



Elizabeth Gilbert, Esq.
Public Arbitrator Presiding Chairperson



Signature Date

Anthony Michael Sabino, Esq.
Public Arbitrator

Signature Date

Jean C. Black
Non-Public Arbitrator

Signature Date

August 7, 2003

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Elizabeth Gilbert, Esq.	-	Public Arbitrator, Presiding Chair
Anthony Michael Sabino, Esq.	-	Public Arbitrator
Jean C. Black	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

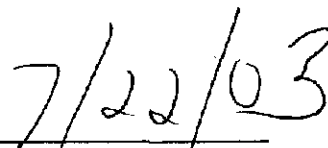
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.

Elizabeth Gilbert, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Anthony Michael Sabino, Esq.
Public Arbitrator



Signature Date

Jean C. Black
Non-Public Arbitrator

Signature Date

August 7, 2003

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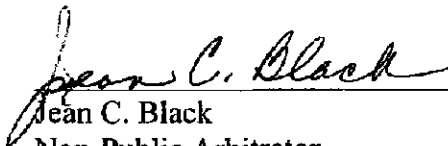
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Elizabeth Gilbert, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Anthony Michael Sabino, Esq.
Public Arbitrator

Signature Date



Jean C. Black
Non-Public Arbitrator

7/25/03

Signature Date

August 7, 2003

Date of Service (For NASD Dispute Resolution use only)