

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant / Counter-Respondent
Christopher C. McGrann

v.

02-07398
Minneapolis, Minnesota

Respondent / Counter-Claimant
First Albany Corporation

Nature of Dispute: Associated Person v. Member and Member v. Associated Person

REPRESENTATION OF PARTIES

Christopher C. McGrann ("Claimant") was represented by Joseph W. Anthony, Esq., of Anthony Ostlund & Baer, P.A., Minneapolis, Minnesota.

First Albany Corporation ("FAC") was represented by Irwin Weltz, Esq., of Brunelle & Hadjickow, P.C., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about December 6, 2002. Submission Agreement of Claimant was signed on or about December 5, 2002.

A Statement of Answer and Counterclaim was filed by Respondent First Albany Corporation on or about February 18, 2003.

Claimant submitted a Reply to FAC's Counterclaim on or about February 28, 2003.

FAC filed a Motion for Change of Venue on or about November 10, 2003. Claimant filed an Opposition to FAC's Motion on or about November 21, 2003. FAC filed a Reply to its Motion for Change of Venue on or about November 21, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, violation of Minnesota Stat. § 181.64, and violations of NASD rules. The causes of action related to Claimant's allegation that FAC breached its employment contract with him after unilaterally imposing additional performance obligations. Claimant further alleged that FAC stated false and defamatory reasons for his departure

and has not honored the guaranteed bonuses and incentives as set forth in the March 30, 2001 employment contract.

FAC denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim is barred by Claimant's fraud, misrepresentation and fraudulent inducement; Claimant's claims should be dismissed, in whole or in part, because the alleged defamatory statements were truthful, not defamatory, made without fault and were also non-actionable opinions, protected by both qualified and absolute privileges; Claimant's claims should be dismissed, in whole or in part, because any damages allegedly sustained were caused by Claimant's own actions; and Claimant's claims are barred, in whole or in part, by the applicable statutes of limitations, statutes of fraud and by the doctrines of waiver, accord, satisfaction, novation, estoppel, res judicata, collateral estoppel, unclean hands, ratification and laches.

In FAC's Counterclaim, it asserted causes of action including the following: breach of contract, fraud, misrepresentation, fraudulent inducement, negligence, negligent misrepresentation and violation of NASD rules. The causes of action related to FAC's allegation that Claimant made fraudulent and misleading representations to FAC in regard to the revenue he was going to bring to FAC with the intent to defraud. FAC alleged that not only did Claimant overstate and inflate these numbers, but also he did not perform his duties as outlined, as a result Claimant was discharged for cause and is responsible for breach of contract in regard to his employee forgivable loan.

Claimant denied the allegations set forth in FAC's Counterclaim and asserted affirmative defenses including the following: FAC's counterclaim failed to state a claim upon which relief can be granted; FAC's claim for breach of contract is invalid for lack of consideration; and the counterclaim is barred by the doctrine of unclean hands.

RELIEF REQUESTED

Claimant requested an award of unspecified compensatory damages to be determined at the hearing. At the arbitration hearing, Claimant requested an award of \$ 840,165.99 in compensatory damages, costs, attorney's fees, interest, punitive damages and for such other relief that the Panel deemed just and equitable.

FAC requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees. In FAC's Counterclaim, it requested \$350,000 in compensatory damages, interest, attorney's fees, punitive damages, costs and any other relief that the Panel deemed just and equitable.

OTHER ISSUES CONSIDERED & DECIDED

Respondent First Albany Corporation 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, and appeared and testified through counsel at the hearing is bound by the determination of the Panel on all issues submitted.

The Director of Arbitration, on or about December 2, 2003 denied FAC's Motion to Change Venue.

The Panel has made the following Findings of Fact with regard to FAC's Counterclaim:

1. Not only was there no evidence presented to support the claim of fraud, no witness would even state that Christopher McGrann defrauded First Albany Corporation in any way, even when the witnesses were prompted by the attorney for First Albany Corporation. First Albany Corporation presented no person in authority that would admit to either being defrauded or seeing the allegation in the counterclaim before it was filed; and
2. The claim of fraud made against Christopher McGrann by First Albany Corporation in this matter was made only for the purpose of coercing Christopher McGrann.

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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, First Albany Corporation, is liable for and shall pay to Claimant, Christopher C. McGrann, the sum of Eight Hundred Forty Thousand One Hundred Sixty Five Dollars and Ninety Nine Cents (\$840,165.99) as compensatory damages;
2. Respondent, First Albany Corporation, is liable for and shall pay to Claimant, Christopher C. McGrann, interest on above-stated sum at the Minnesota statutory rate from and including October 18, 2002, through and including the date this Award is paid in full;
3. Respondent, First Albany Corporation is liable for and shall pay to Claimant, Christopher C. McGrann, One Hundred Thousand Dollars and No Cents (\$100,000.00) in attorney's fees pursuant to Minn. Stat. § 181.13;

4. Respondent, First Albany Corporation is liable for and shall pay to Claimant, Christopher C. McGrann, the sum of Two Hundred Fifty Dollars and No Cents (\$250.00) in costs as reimbursement of Claimant's filing fees;
5. Respondent FAC's Counterclaims, each and all, are hereby denied and dismissed with prejudice in their entirety; and
6. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages, are denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee	= \$ 250
Counterclaim filing fee	= \$ 1,000

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is First Albany Corporation.

Member surcharge	= \$ 1,700
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 2,750

Forum Fees and Assessments

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

One (1) Pre-hearing session with Chair x \$ 450	= \$ 450
Pre-hearing conference: 11/14/2003 1 session	
One (1) Pre-hearing session with Panel x \$ 1,125	= \$ 1,125

Pre-hearing conference: 06/19/2003 1 session

Sixteen (16) Hearing sessions with Panel x \$ 1,125 = \$ 18,000

Hearing Dates:	12/02/2003	2 sessions
	12/03/2003	2 sessions
	12/04/2003	2 sessions
	12/08/2003	2 sessions
	12/09/2003	2 sessions
	12/10/2003	2 sessions
	12/11/2003	2 sessions
	12/12/2003	2 sessions

Total Forum Fees = \$ 19,575

The Arbitration Panel has assessed \$ 19,575 of the forum fees to First Albany Corporation.

Fee Summary

Claimant, Christopher C. McGrann is liable for:

<u>Initial Filing Fee</u>	= \$ 250
Total Fees	= \$ 250
<u>Less payments</u>	= \$ 1,250
Balance Refunded By NASD Dispute Resolution	= \$ 1,000

Respondent, First Albany Corporation, is liable for:

<u>Member Fees</u>	= \$ 5,200
Counterclaim Filing Fee	= \$ 1,000
<u>Forum Fees</u>	= \$ 19,575
Total Fees	= \$ 25,775
<u>Less payments</u>	= \$ 4,450
Balance Due NASD Dispute Resolution	= \$ 21,325

All balances are due to NASD Dispute Resolution pursuant to Rule 10330(g) of the Code of Arbitration

ARBITRATION PANEL

Thomas J. Gmeinder, Esq. - Public Arbitrator, Presiding Chair
Joyce G. Gordon, JD - Public Arbitrator
MaryPat Jahnke- Non-Public Arbitrator

Concurring Arbitrators:

Thomas J. Gmeinder, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Joyce G. Gordon, JD
Public Arbitrator

Signature Date

MaryPat Jahnke
Non-Public Arbitrator

Signature Date

2/2/04
Date of Service (NASD use only)

ARBITRATION PANEL

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MaryPat Jahnke - Non-Public Arbitrator

Concurring Arbitrators:

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Public Arbitrator, Presiding Chair

Joyce G. Gordon, JD
Public Arbitrator

MaryPat Jahnke
Non-Public Arbitrator

Signature Date

2-26-04
Signature Date

Signature Date

3/2/04
Date of Service (NASD use only)

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MaryPat Jahnke- Non-Public Arbitrator

Concurring Arbitrators:

Thomas J. Gmeinder
Thomas J. Gmeinder, Esq.
Public Arbitrator, Presiding Chair

2 / 25 / 04
Signature Date

Joyce G. Gordon, JD
Joyce G. Gordon, JD
Public Arbitrator

Signature Date

MaryPat Jahnke
MaryPat Jahnke
Non-Public Arbitrator

Signature Date

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Concurring Arbitrators:

Thomas J. Gmeinder, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Joyce G. Gordon, JD
Public Arbitrator

Signature Date



MaryPat Jahnke
Non-Public Arbitrator

2/27/2004

Signature Date

2/2/04

Date of Service (NASD use only)