
**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimants
James M. Hall, Bob Hall and
Patricia Hall

Case Number: 03-00793

Name of the Respondent
Roy Thomas Amico

Hearing Site: Chicago, Illinois

Nature of the Dispute: Customers vs. Associated Person

REPRESENTATION OF PARTIES

Claimants, James M. Hall, Bob Hall and Patricia Hall ("The Halls"), hereinafter collectively referred to as "Claimants": David Lemoie, Esq., located in Providence, Rhode Island.

Respondent, Roy Thomas Amico ("Amico"), hereinafter referred to as "Respondent": Alan J. Foxman, Esq., located in Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed on January 29, 2003. Claimants, James M. Hall, Bob Hall, and Patricia Hall jointly signed the Uniform Submission Agreement on January 27, 2003, and January 29, 2003.

Statement of Answer filed by Respondent Roy Thomas Amico on October 16, 2003. Amico did not submit a signed Uniform Submission Agreement, but by filing his Statement of Answer, he submitted himself to NASD jurisdiction.

Respondent Roy Thomas Amico filed a Motion for Summary Judgment and/or Motion to Dismiss on March 28, 2003.

Claimant's Objection to Respondent's Motion for Summary Judgment and/or Motion to Dismiss filed on April 30, 2003.

Respondent's Reply to Claimant's Response to Motion for Summary Judgment and/or Motion to Dismiss filed on August 28, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty and misrepresentations, non-disclosures and common law fraud. The causes of action relate to a loan purchase agreement and various stocks, including E-TravelService.Com, 4STATS and Blagman International, Inc.

From 1991 to June 2002, Respondent Amico, a broker with the firm of Joseph Charles and Associates, Inc. (hereinafter "JCA"), was the broker who handled the joint account of Claimants Robert D. Hall and his wife, Patricia Hall. During the first quarter of 1999, Mr. Amico recommended to Mr. Hall that he invest in the purchase of a boat company known as Sonic USA. Mr. Amico was acting as a finder in this instance inasmuch as JCA had decided it was not interested as an investment firm in promoting the Sonic boat acquisition. The investment was to be made initially in the form of a nine-month bridge loan to a company known as Sonic Acquisition Corporation, Inc. (hereinafter "SAC") being organized by Mr. Alex Varanos. SAC was putting together a group of lenders who supply funds to SAC, which would then purchase the business of Sonic USA.

Mr. Hall decided to make his loan to SAC in the amount of \$146,000.00, pursuant to a Loan Agreement dated March 12, 1999, and Mr. Hall's son, James M. Hall, also participated in this investment with his loan to SAC of \$100,000.00 pursuant to a Loan Agreement dated March 25, 1999. The closing date was to be March 30, 1999 at which time the loan funds were to be delivered to SAC, and the repayment date for the loan was to be December 30, 1999.

The Halls delivered their funds comprising the bridge loans to Mr. Amico as their agent or broker, and the funds were placed in an escrow account over which Mr. Amico had signing authority. These funds were then to be turned over to SAC when Mr. Amico would authorize their release. A finder's fee was also paid by the Claimants. Mr. Amico then released the funds from escrow to SAC pursuant to the Loan Agreement so that SAC would have the funds available for the eventual purchase from Sonic USA, and the funds came into the possession of Alex Varanos of SAC.

After the funds had been released by Mr. Amico from the escrow account and turned over to SAC, Claimants were informed that the sale by Sonic USA to SAC would not be consummated because Sonic USA had actually been sold to a third party. Claimants contended that Mr. Amico was aware of this fact, should not have released the funds from escrow, and should have informed the Halls of the situation at an early time. Mr. Amico disputes these contentions. Claimant then sought to have repaid to them the amounts of their bridge loans and the finder's fees that went to JCA.

In an effort to resolve their dispute, Claimants entered into Rescission and Restitution Agreements with SAC and JCA whereby SAC agreed to repay to Claimants the unpaid balance of their bridge loans, and JCA agreed to repay to Claimants the finder's fees that Claimants had paid. JCA did follow through and repay to Claimants their finder's fees, and Mr. Amico contends that as an employee and agent of JCA, he is thereby, released from all claims by Claimants. But SAC failed to repay to Claimants the full amount of their bridge loans, and Mr. Varanos may have absconded with their funds.

Claimants contend that the Rescission and Restitution Agreements were not effective in favor of JCA (and therefore, in favor of Mr. Amico as its employee and agent) unless Claimants were also paid in full by SAC. Mr. Amico disputes this contention and contends that the release of JCA and himself was effective on JCA's payment to Claimants, apart from whether SAC has repaid its obligations under the Rescission and Restitution Agreement. Acting upon their belief that, absent SAC's payment in full, the Rescission and Restitution Agreement was not effective at all, Claimants brought this arbitration proceeding against Mr. Amico.

Unless specifically admitted in its Answer, Respondent Amico denied the allegations made in the Statement of Claim and asserted the following affirmative defenses:

1. The Claimants are estopped from pursuing an action against Mr. Amico and/or have waived their right to seek compensation from Mr. Amico since the Claimants have admitted and acknowledged that on or about January 14, 2000 they settled their complaint relating to their alleged losses and released JCA and Mr. Amico from any and all claims relating to this transaction. The settlement also constitutes the affirmative defense of payment and release.
2. The Statement of Claim, on its face, fails to state a claim upon which relief may be granted since the Claimants have admitted and acknowledged that on or about January 14, 2000 they settled their complaint relating to their alleged losses and released JCA and Mr. Amico from any and all claims relating to this transaction.
3. The Statement of Claim, on its face, fails to state a claim upon which relief may be granted since the Claimants have acknowledged therein that Mr. Amico did, in fact, attempt to assist Claimants in obtaining compensation from Varonos.
4. Any losses incurred by the Claimants were caused by Varonos as evidenced by the personal guarantee signed by Varonos and by the subsequent judgment obtained against him. Consequently, Varonos' acts operate as a superceding or intervening cause that breaks the causal connection between Mr. Amico's alleged actions and the losses suffered by Claimants. Consequently, there is a lack of proximate cause.
5. The decline in value of the E-TravelService.com, Inc. and 4STATS stock was solely due to market conditions when the so-called "tech bubble" burst in mid-2000. Mr. Amico cannot be held liable for the decline in value of this stock since the entire stock market experienced a significant downturn during this period. This market downturn acted as a superceding or intervening cause of the Claimants' loss.
6. Mr. Amico's inability to sell the Blagman International, Inc. stock or transfer it to the Claimants was due solely to the fact that Varonos transferred restricted stock to him rather than transferring unrestricted stock directly to Claimants. Mr. Amico had no control over the transfer and was prevented from transferring it or selling more than a certain minimal percentage by federal and state law as well as by the rules and regulations of the SEC and self-regulatory organizations.
7. Claimants have acknowledged that they have obtained a judgment against Varonos for their entire loss. Upon information and belief, the complaint filed against Varonos blames him for the entire loss and does not claim that Mr. Amico was responsible. Consequently, Claimants are now estopped from taking a contrary position to the one they asserted in a previous litigation. Had Claimants believed they had a cause of action against Mr. Amico, they should have brought an action against him at the same time they filed the action against Varonos. The fact that they have been unable to collect on this judgment does not make Mr. Amico liable therefore. Claimants went after the responsible party and, now that they are having difficulties collecting against that individual, they are seeking to lay the blame on someone else. It is possible now that, were the panel to find Mr. Amico liable and the Claimants subsequently levy on the judgment they have against Varonos, they would receive a double recovery. Claimants are not entitled to receive a windfall. Their sole remedy at this point is to pursue collection on the judgment they already have.
8. Mr. Hall is seeking to obtain Mr. Amico's interest in the real estate venture. If Mr. Hall is successful in obtaining an award against Mr. Amico, he hopes Mr. Amico will

- transfer his share of the real estate over to him or force Mr. Amico to liquidate his ownership interest in that real estate and transfer the proceeds thereof to Mr. Hall who will then use those proceeds to acquire the remaining interest in the real estate.
9. Claimants assumed the risk of loss. Bob Hall was a knowledgeable businessman and a sophisticated investor. Mr. Hall was aware that the value of investments can rise and fall and was further aware that certain investments require more detailed due diligence than others. This was why Mr. Hall conducted his own due diligence into this investment. Mr. Hall was in an equal position to Mr. Amico to learn of Varonos' character.
 10. Claimants have waited too long to bring this action. The Claim should, therefore, be dismissed on the principles of laches. Joseph Charles & Associates is out of business and many of the records have either been lost or are unavailable. Had Claimants brought this action sooner, Respondent might have been able to obtain documents to demonstrate the extent of Mr. Hall's own due diligence. As it stands now, *obtaining those documents may prove difficult at best.*

RELIEF REQUESTED

Claimants seek damages in the total amount of \$976,059.00 as of January 31, 2003, to be increased annually by 15% interest and also increased in proportion to future legal fees and collection costs incurred.

Respondent Amico requested denial and dismissal of Claimants' Statement of Claim in its entirety, and seeks attorney's fees and expungement of this arbitration from the CRD record of Respondent Amico.

OTHER ISSUES CONSIDERED AND DECIDED

After reviewing the parties' submissions relating to Respondent's Motion for Summary Judgment and/or Motion to Dismiss, and the responses and replies filed thereto, the Panel issued an Order dated September 25, 2003, which denied Respondent's Motion.

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 and 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. The Rescission and Restitution Agreements are effective to release Mr. Amico from all claims, including claims that might be sought in an arbitration proceeding; and
2. There is not sufficient evidence to set aside that Agreement based on allegations that Mr. Amico (i) breached his fiduciary duty to Claimants by failing to escrow the bridge loan funds until a closing of the purchase of Sonic USA by SAC was confirmed; and (ii) committed common law fraud, and also violated Florida Statutes section 517.310, by misrepresenting or failing to provide information to Claimants that the purchase of Sonic USA had not occurred.

3. The arbitrators find that each Rescission and Restitution Agreement (hereinafter "R and R") is clear by its terms to release JCA, and therefore, Mr. Amico, upon JCA's repayment of its finder's fee without any requirement that SAC must also make its repayment to Claimants as a condition of JCA's release. We base this finding on the following analysis, and we will refer to each R and R in the singular even though two identical R and R's were signed respectively by Robert D. Hall and James M. Hall.
- a. The "Whereas" clauses of the R and R refer in separate sections to Claimant's bridge loan amount paid to SAC and to the finder's fee paid to JCA. Nowhere does the R and R add these together into a single total and declare that this total must be repaid to Claimants before the R and R may be effective as to each of SAC or JCA.
 - b. Section 3 of the R and R states that "effective upon the dates set forth in Section 4 below, each of the parties...hereby agrees to release and waive any and all claims...against each other party" and its employees and agents, and acknowledges that "upon performance of this Agreement and receipt by Lender of the amount of the payment set forth in Section 2 above," all obligations pursuant to the Loan Agreement are fully satisfied and discharged. [Emphasis added]
 - i. Section 4 contains separate subsections, one of which refers to Claimant's release of SAC to be effective upon "the Company's payment for which Section 2 provides," and another of which refers to Claimant's release of JCA upon "JCA's payment for which Section 2 provides."
 - ii. Section 4 does not provide anywhere for conditioning the release of SAC upon JAC's payments or conditioning the release of JCA upon SAC's payment. On the contrary, separate effective dates are set for the release of SAC and JCA, respectively, upon their respective payments to Claimant.
 - iii. Further, we interpret the phrase "upon the performance of this Agreement" in Section 3 to refer to the respective performances of the R and R by each of SAC and JAC in view of the immediately following reference in the same sentence to the singular "amount of the payment set forth in Section 2," which we interpret to refer to the separate amounts owing by each of SAC and JCA. [Emphasis added] In other words, when the sentence states that "upon performance of this Agreement and receipt by Lender of the amount of the payment set forth in Section 2 above, all obligations...are fully satisfied and discharged," we find that use of the singular "performance" and "the amount" reinforces our conclusion that the respective releases of SAC and JCA are not interdependent.
 - iv. The above conclusions do not leave Claimants without a remedy. The R and R is a legal contract that has been negotiated and signed by all the parties thereto, and it calls for certain acts of performance by each Respondent in the form of monetary payments to Claimants. If one of these parties has failed to comply with its obligation under the contract, an action may be brought against that party by the other party to enforce the contract. As stated previously, the failure of one of the signatories to comply does not void the contract with respect to other parties who have complied with its terms. It remains a valid legal contract, and the remedy for a breach by one of the parties is to sue that party rather than to declare the entire contract

void as to all parties.

4. The arbitrators find that Claimants have not satisfied their burden of proof that the Rescission and Restitution Agreements should be set aside on the basis of Claimants' allegations of breach of fiduciary duty, common law fraud and violation of Florida Statutes. A number of witnesses testified as to exactly what Mr. Amico knew and when he found out that the purchase of Sonic USA by SAC had not taken place and how such knowledge should have affected his release of Claimants' bridge loan funds to SAC, and the testimony of these several witnesses is not in agreement. Further, Mr. Amico testified that he relied upon a direction from JCA's house counsel at the time, Mr. Levine, to release Claimants' bridge loan funds from escrow, but neither party to this arbitration proceeding summoned Mr. Levine as a witness, and his testimony is not available to the Panel.
5. Accordingly, the Panel does not feel that it can find sufficient reliable evidence on which to set aside the Rescission and Restitution Agreement as a valid legal contract, and we have already found that the Rescission and Restitution Agreement does release JCA, and also Mr. Amico as its employee and agent, from any and all claims, including the claims brought by Claimants in this arbitration proceeding.
6. Therefore, any and all claims asserted by Claimants, James M. Hall, Bob Hall and Patricia Hall, are denied, and the Panel finds in favor of Respondent Roy Thomas Amico.
7. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
8. 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 = \$ 375.00

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 person at the time of the events giving rise to the dispute. Accordingly, Newbridge Securities is the member firm responsible for the member fees in this proceeding:

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

February 3-5, 2004, adjournment by Respondent	= \$1,200.00 (waived by Panel)
September 8-10, 2004, adjournment by Respondent	= \$1,500.00 (waived by Panel)

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:

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$1,200.00
Pre-hearing conference: August 28, 2003 1 session

Six (6) Hearing sessions @ \$1,200.00 = \$7,200.00
Hearing Dates: July 12, 2005 2 sessions
July 13, 2005 2 sessions
July 14, 2005 2 sessions

Total Forum Fees = \$8,400.00

1. The Panel assessed 75% of the total forum fees in the amount of \$6,300.00 jointly and severally to Claimants, James M. Hall, Bob Hall and Patricia Hall.
2. The Panel assessed 25% of the total forum fees in the amount of \$2,100.00 solely to Respondent, Roy Thomas Amico.

FFF SUMMARY

1. Claimants, James M. Hall, Bob Hall and Patricia Hall, are jointly liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$6,300.00
Total Fees	= \$6,675.00
Less payments	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$5,100.00

2. Respondent, Thomas Roy Amico, is solely liable for:

Forum Fees	= \$2,100.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,100.00

3. Member Firm, Newbridge Securities, is solely liable for:

Member Fees	= \$7,000.00
Less payments	= \$2,250.00
Balance Due NASD Dispute Resolution	= \$4,750.00

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

ARBITRATION PANEL

Theodore M. Utchen, Esq.	-	Public Arbitrator, Presiding Chairperson
Susanne J. Hollander	-	Public Arbitrator
Susan K. Franz	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Theodore M. Utchen, Esq.
Theodore M. Utchen, Esq.
Public Arbitrator, Presiding Chairperson

10/10/05
Signature Date

/s/ Susanne J. Hollander
Susanne J. Hollander
Public Arbitrator

10/7/05
Signature Date

/s/ Susan K. Franz
Susan K. Franz
Non-Public Arbitrator

10/6/05
Signature Date

10/10/05
Date of Service (For NASD Dispute Resolution office use only)

ARBITRATION PANEL

Theodore M. Utchen, Esq.	-	Public Arbitrator, Presiding Chairperson
Susanne J. Hollander	-	Public Arbitrator
Susan K. Franz	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Theodore M. Utchen
Theodore M. Utchen, Esq.
Public Arbitrator, Presiding Chairperson

Oct. 10, 2005
Signature Date

Susanne J. Hollander
Public Arbitrator

Signature Date

Susan K. Franz
Non-Public Arbitrator

Signature Date

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

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ARBITRATION PANEL

Theodore M. Uichen, Esq.
Susanne J. Hollander
Susan K. Franz

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Theodore M. Uichen, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Susanne J. Hollander
Public Arbitrator

10-7-05
Signature Date

Susan K. Franz
Non-Public Arbitrator

Signature Date

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

ARBITRATION PANEL

Theodore M. Utchen, Esq.
Susanne J. Hollander
Susan K. Franz

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Theodore M. Utchen, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Susanne J. Hollander
Public Arbitrator

Signature Date


Susan K. Franz
Non-Public Arbitrator

10-06-05
Signature Date

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