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**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Sterne, Agee & Leach, Inc.

Case Number: 03-00968

Name of the Respondent  
James H. Goolsby

Hearing Site: Atlanta, Georgia

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Nature of the Dispute: Member vs. Associated Person.

**REPRESENTATION OF PARTIES**

For Sterne, Agee & Leach, Inc., hereinafter referred to as "Claimant": G. Wayne Hillis, Jr., Esq., and Aaron W. Lipson, Esq., Parker, Hudson, Rainer & Dobbs, LLP, Atlanta, Georgia.

For James H. Goolsby, hereinafter referred to as "Respondent": Adam E. Miller, Esq., Law Offices of Adam E. Miller, P.A., Margate, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: February 7, 2003.

Claimant signed the Uniform Submission Agreement: February 6, 2003.

Statement of Answer and Counterclaim filed by Respondent on or about: April 23, 2003.

Respondent signed the Uniform Submission Agreement: April 23, 2003.

First Amended Statement of Claim filed by Claimant on or about: May 8, 2003.

Response to Counterclaim filed by Claimant on or about: May 8, 2003.

Statement of Answer and Counterclaim in Response to the First Amended Statement of Claim filed by Respondent on or about: May 23, 2003.

Response to Amended Answer and Counterclaim filed by Claimant on or about: May 23, 2003.

Motion to Prohibit Respondent from Introducing Exhibits or Calling Witnesses filed by Claimant on or about: January 15, 2004.

Response to Motion to Prohibit Respondent from Introducing Exhibits or Calling Witnesses filed by Respondent on or about: January 20, 2004.

Motion for Leave to Take Depositions filed by Respondent on or about: February 4, 2004.

Response to Motion for Leave to Take Depositions filed by Claimant on or about: February 13, 2004.

Motion to Strike Respondent's Document Production List filed by Claimant on or about: February 13, 2004.

Motion for Leave to Amend Respondent's Answer, Response and Counterclaim filed by Respondent on or about: February 16, 2004.

Response to Motion for Leave to Amend Respondent's Answer, Response and Counterclaim filed by Claimant on or about: February 17, 2004.

Motion to Strike Subpoenas, Orders of Appearance, and Supplemental Witness List filed by Claimant on or about: February 23, 2004.

Response to Motion to Strike Subpoenas, Orders of Appearance, Supplemental Witness List and Renewed Motion for Continuance filed by Respondent on or about: February 23, 2004.

Affidavit of Attorneys' Fees and Costs submitted by Respondent on or about: March 3, 2004.

Letter stipulating to amount of compensation due Respondent for March, 2001 filed by Claimant on behalf of the parties on or about: March 3, 2004.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; monies had and received; unjust enrichment; attorney's fees under the promissory notes; and attorney's fees at law. The causes of action relate to the alleged failure of Respondent to repay to Claimant the total unforgiven principal balance due upon Respondent's termination of employment pursuant to three fully executed promissory notes.

Unless specifically admitted in his Answer and Amended Answer, Respondent denied the allegations made in the Statement of Claim, as amended, and asserted various defenses. Additionally, Respondent asserted the following causes of action in his Counterclaim: promissory estoppel and failure to provide proper upper management support.

Unless specifically admitted in its Response to Counterclaim, Claimant denied the allegation made in the Counterclaim and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$62,291.86, plus attorney's fees, costs, interest, and such other and further relief as the Panel deemed just and proper. Claimant further requested that the Counterclaim be dismissed with prejudice.

Respondent requested that Claimant take nothing, that the claim of Claimant be denied in its entirety, that Respondent receive an award of litigation expenses including attorney's fees, arbitration costs, filing and session fees and expert witness fees, and that Respondent be granted such other and further relief as the Panel deemed proper. In his Counterclaim, Respondent additionally requested compensatory damages for unpaid salary, commission overrides and other incidental compensation in an amount to be proven at the hearing but no less than a setoff of the entire amount claimed by Claimant to be due from Respondent.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On or about January 23, 2004, the Panel issued an Order which denied Claimant's Motion to Prohibit Respondent from Introducing Exhibits or Calling Witnesses during the hearing, except as to recruits from Claimant's Atlanta, Georgia and Kennesaw, Georgia offices from 1998 until the present.

On or about January 23, 2004, the Panel issued an Order which denied the following motions: Respondent's Motion for Leave to Take Depositions; Claimant's Motion to Strike Respondent's Document Production List, Respondent's Motion for Leave to Amend Respondent's Answer, Response and Counterclaim; and Claimant's Motion to Strike Subpoenas, Orders of Appearance, and Supplemental Witness List, except as to witnesses whose names had never before appeared on any witness list submitted by Respondent.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable on the breach of contract claim and shall pay to Claimant compensatory damages in the amount of \$60,791.67, plus pre-judgment interest through February 24, 2004 in the amount of \$6,188.38.

Respondent is liable and shall pay to Claimant attorneys' fees in the amount of \$37,435.57 pursuant to the promissory notes executed by Respondent.

Claimant is liable on the promissory estoppel claim and shall pay to Respondent compensatory damages in the amount of \$11,681.55, representing the amount of return Respondent would have made had he been able to purchase the convertible debenture from Claimant.

Claimant is liable and shall pay to Respondent the agreed upon sum of \$2,974.00, representing unpaid compensation due Respondent for the month of March, 2001, Respondent's final month of employment with Claimant.

Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly,

Respondent is a member firm and a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,700.00</u>
Total Member Fees	= \$3,550.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

January 21 and 22, 2004, adjournment by Respondent = \$ 750.00

**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.

Injunctive relief fees were not assessed in this matter.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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:

Three (3) Pre-hearing sessions with the Panel @ \$750.00/session = \$2,250.00

Pre-hearing conferences:	August 14, 2003	1 session
	January 20, 2004	1 session
	February 20, 2004	1 session

Five (5) Hearing sessions @ \$750.00/session = \$3,750.00

Hearing Dates:	February 24, 2004	2 sessions
	February 25, 2004	3 sessions

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Total Forum Fees = \$6,000.00

The Panel has assessed forum fees of \$3,000.00 to Claimant.

The Panel has assessed forum fees of \$3,000.00 to Respondent.

**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.

There were no administrative costs incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$3,550.00

<u>Forum Fees</u>	= \$3,000.00
<u>Total Fees</u>	= \$7,550.00
<u>Less Payments</u>	= \$5,300.00
Balance Due NASD Dispute Resolution	= \$2,250.00

Respondent is solely liable for:

Counterclaim Filing Fee	= \$ 225.00
Adjournment Fee	= \$ 750.00
<u>Forum Fees</u>	= \$3,000.00
<u>Total Fees</u>	= \$3,975.00
<u>Less Payments</u>	= \$1,975.00
Balance Due NASD Dispute Resolution	= \$2,000.00

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

**ARBITRATION PANEL**

Joe W. Gladden, CPA	- Non-Public Arbitrator, Presiding Chairperson
Joseph J. Castro, CFP	- Non-Public Arbitrator
Marian Cover Dockery, Esq.	- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Joe W. Gladden, CPA  
Non-Public Arbitrator, Presiding Chairperson

March 7, 2004  
Signature Date

/s/  
Joseph J. Castro, CFP  
Non-Public Arbitrator

March 4, 2004  
Signature Date

/s/  
Marian Cover Dockery, Esq.  
Non-Public Arbitrator

March 9, 2004  
Signature Date

March 9, 2004  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
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Joe W. Gladden, CPA  
 Non-Public Arbitrator, Presiding Chairperson

3/7/04  
 Signature Date

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 Joseph J. Castro, CFP  
 Non-Public Arbitrator

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 Signature Date

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Concurring Arbitrators' Signatures

Joe W. Gladden, CPA  
Non-Public Arbitrator, Presiding Chairperson

Signature Date

Joseph J. Castro, CFP  
Non-Public Arbitrator

3-4-2004  
Signature Date

Marian Cover Dockery, Esq.  
Non-Public Arbitrator

Signature Date

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Joseph J. Castro, CFP

Marian Cover Dockery, Esq.

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

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Signature Date

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 Non-Public Arbitrator

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Signature Date

*Marian Cover Dockery*  
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 Marian Cover Dockery, Esq.  
 Non-Public Arbitrator

*March 9, 2004*  
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