

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

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In the Matter of the Arbitration Between:

Marc Singer (Claimant) v. Investment Counseling, Inc., Capital Markets Advisory Group, LLC, Arigato Investment International, Inc., Lewis Hodge, Nicholas Sichi, Bill Fabiano (Respondents)

Case Number: 03-01127

Hearing Site: New York, New York

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Nature of the Dispute: Associated Person vs. Member, Non-Members and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimant Marc Singer ("Singer") hereinafter referred to as "Claimant" appeared *pro se*.

Respondents Investment Counseling, Inc ("ICI"), Lewis Hodge ("Hodge"), and Nicholas Sichi ("Sichi"): Curtis Carlson, Esq., Payton & Carlson, P.A., Miami, FL. Previously represented by: Mitchell E. Herr, Esq., Holland & Knight, LLP, Miami, FL.

Respondent Capital Markets Advisory Group, LLC ("Capital Markets") did not enter an appearance in this matter.

Respondent Arigato Investment International, Inc. ("Arigato") did not enter an appearance in this matter.

Respondent Bill Fabiano ("Fabiano") did not enter an appearance in this matter.

ICI, Hodge, Sichi, Capital Markets, Arigato, and Fabiano are hereinafter collectively referred to as "Respondents".

**CASE INFORMATION**

Statement of Claim filed on or about: February 12, 2003.

Response to Motion for Change of Venue filed on or about: May 20, 2003.

Claimant signed the Uniform Submission Agreement: February 12, 2003.

Joint Motion for Change of Hearing Locale; Motion to Dismiss Claims; Statement of Answer and Affirmative Defenses filed by Respondents ICI, Hodge, and Sichi on or about: April 29, 2003.

Reply in Further Support of Motions to Dismiss and for Change of Venue filed by Respondents on or about: June 10, 2003.

Respondent ICI signed the Uniform Submission Agreement: April 29, 2003.

Respondent Hodge signed the Uniform Submission Agreement: April 29, 2003.

Respondent Sichi signed the Uniform Submission Agreement: April 29, 2003.

Respondent Capital Markets did not file a Statement of Answer or sign a Uniform Submission Agreement.

Respondent Arigato Investments International did not file a Statement of Answer or sign the Uniform Submission Agreement.

Respondent Fabiano did not file a Statement of Answer or sign the Uniform Submission Agreement.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; failure to pay compensation owed; and wrongful termination.

Unless specifically admitted in their Motion for Change of Hearing Locale; Motion to Dismiss Claims; Statement of Answer and Affirmative Defenses, Respondents ICI, Hodge, and Sichi denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$112,132.62; punitive damages in the amount of \$112,132.62; costs; attorneys' fees; and other case-related costs.

Respondents ICI, Hodge, and Sichi requested that the Panel dismiss all claims asserted in this matter on the grounds that there is no valid employment contract on which to base Claimant's breach of contract allegations. Additionally, Respondents ICI, Hodge, and Sichi requested a reimbursement of attorneys' fees; and, in the alternative to dismissal, Respondents requested a change of venue from New York to Florida.

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

Respondents Capital Markets, Arigato, and Fabiano are not NASD members and/or an associated person of an NASD member and, therefore, were not required to arbitrate in this forum and did not submit to NASD Dispute Resolution's jurisdiction.

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, 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. Respondent ICI is liable for and shall pay to Claimant Singer compensatory damages in the amount of \$5,312.07.
2. 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	= \$300.00
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#### **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. Accordingly, Investment Counseling, Inc. is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

#### **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:

Three (3) Pre-hearing sessions with Panel @ \$1,125.00	= \$3,375.00
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Pre-hearing conferences:	November 6, 2003	1 session
	January 6, 2004	1 session
	April 15, 2004	1 session

Three (3) Hearing sessions @ \$1,125.00	= \$3,375.00
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Hearing Dates:	April 19, 2004	2 sessions
	April 20, 2004	1 sessions

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Total Forum Fees	= \$6,750.00
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1. The Panel has assessed \$3,375.00 of the forum fees against Claimant Singer.
2. The Panel has assessed \$3,375.00 of the forum fees against Respondent ICI.

**Fee Summary**

1. Claimant is solely liable for:	
Initial Filing Fee	= \$ 300.00
Forum Fees	= \$3,375.00
Total Fees	= \$3,675.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$2,250.00
2. Respondent ICI is solely liable for:	
Member Fees	= \$5,200.00
Forum Fees	= \$3,375.00
Total Fees	= \$8,575.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$8,575.00

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

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Steven J. Petrie	-	Non-Public Arbitrator, Presiding Chair
Fred L. Simon	-	Non-Public Arbitrator
Herbert Z. Geiger, Esq.	-	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.

  
Steven J. Petrie  
Non-Public Arbitrator, Presiding Chairperson

4/28/04  
Signature Date

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Fred L. Simon  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

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Herbert Z. Geiger, Esq.  
Non-Public Arbitrator

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Signature Date

April 29, 2004  
Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution  
Arbitration No. 03-01127  
Award Page 5 of 5

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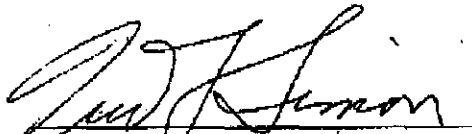
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