

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Lee Jackson

Case Number: 03-01177

Name of the Respondents
Laura A. Pentimone; and,
FBT Investments, Inc.

Hearing Site: Dallas, Texas

REPRESENTATION OF PARTIES

Claimant Lee Jackson, hereinafter referred to as "Claimant": Alex J. Peragine, Esq. of the firm of Peragine & Neill, L.L.C., located in Covington, Louisiana.

Respondents Laura A. Pentimone ("Pentimone") and FBT Investments, Inc. ("FBT"), hereinafter collectively referred to as "Respondents": Joseph C. Peiffer, Esq., of the firm of Corro Fishman Haygood Phelps Walmsley & Casteix, L.L.P., located in New Orleans, Louisiana.

CASE INFORMATION

Statement of Claim filed: February 19, 2003.

Claimant signed the Uniform Submission Agreement: February 28, 2003.

Response to Motion to Decline Jurisdiction filed: May 23, 2003.

Motion to Decline Jurisdiction filed by Respondents on: May 1, 2003.

Respondents' Reply to Response to Motion to Decline Jurisdiction filed: June 3, 2003.

Respondents did not file a Statement of Answer or signed Uniform Submission Agreements.

CASE SUMMARY

Claimant asserted the following causes of action:

Retaliation against Claimant for his inquiries on behalf of his mother-in-law, Ms. Isabel O. Alexis. Specifically, Respondents are alleged to have complained to Claimant's employer's corporate counsel about Claimant's efforts to protect Ms. Alexis. Claimant makes a formal demand on Respondents for damages to include general damages, damage to reputation, intentional infliction of emotional distress, attorney's fees and all costs of these arbitration proceedings.

Respondents Pentimone and FBT submitted a motion to dismiss the claim for lack of jurisdiction

as a matter not covered under NASD Rule 10101. Respondents also characterize Claimant's claim as a cause of action for defamation. Respondent Pentimone denied that she defamed Claimant Jackson.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$30,000.00
Attorneys' Fees	Unspecified amount
Other Costs	Unspecified amount

Respondents requested that the NASD decline jurisdiction and dismiss the case.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Laura A. Pentimone and FBT Investments, Inc. did not file with NASD Dispute Resolution, a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Arbitrator on all issues submitted.

The Arbitrator specifically finds as follows:

It was agreed between the parties during a pre-hearing conference conducted on July 25, 2003, that the telephone hearing held on August 20, 2003, would resolve the jurisdictional issue only. It was also agreed at the pre-hearing conference that should the arbitration process under the NASD rules cover the Claimant's claim, a full hearing on the merits would be conducted on November 12, 2003.

NASD Rule 10101 specifies the subject matters that are eligible for submission under the Code of Arbitration Procedure for the NASD. The rule states in pertinent part:

This Code of Arbitration Procedure is prescribed and adopted pursuant to Article VII, Section 1(a)(iv) of the By-Laws of the Association for the arbitration of any dispute, claim, or controversy arising out of or in connection with the business of any member of the Association, or arising out of the employment or termination of employment of associated person(s) with any member, . . .

It was undisputed that Claimant Lee Jackson did not have an employment relationship with Respondents FBT Investment, Inc., or Laura A. Pentimone, an officer of FBT Investments, Inc. Therefore, the matter involves whether Claimant Jackson has a dispute, claim or controversy arising out of or in connection with the business of Respondents FBT Investments, Inc., and/or its agent, Ms. Pentimone. It was also undisputed that the instant dispute, claim or controversy

does not rest on the grounds that Claimant Lee Jackson has individual business with the Respondents; i.e., he is not a client or customer of Respondents.

The connection between the parties is as follows. Claimant Jackson volunteered to assist his mother-in-law with problems she experienced with an annuity she purchased through a broker allegedly employed and supervised by FBT Investments, Inc. Claimant Jackson is also an officer with Lehman Brothers, but the parties' arguments make clear that he was not acting in his professional capacity. His efforts were given on a personal and private basis to his mother-in-law. In the course of communicating with FBT Investments, Inc. about his mother-in-law's problem, Claimant Jackson used his employer's facsimile transmittal coversheet and facsimile machine. Claimant Jackson is employed in a branch of Lehman Brothers in Texas. Armed with this information, Respondent Pentimone telephoned a representative of Lehman Brothers and later sent a letter to an attorney on staff with Lehman Brothers noting the use of the latter company's fax machine and fax transmittal cover. In addition to conveying the use of the machine and fax transmittal cover, Respondent Pentimone complained to Lehman Brothers about Claimant Jackson's alleged "latest threats." The above-described connection between the Claimant and Respondents does not fall within the matters covered by NASD Rule 10101. There is no business connection between the two parties. The dispute arises from the expressed and acted-upon objection Respondent Pentimone, an agent of Respondent FBT Investments, Inc., had with Claimant Jackson's private and personal attempts to assist his mother-in-law.

AWARD

After considering the pleadings and the argument presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Pursuant to Rule 10305(a) of the Code of Arbitration Procedure, the Claimant's Statement of Claim is dismissed and the parties are referred to their judicial remedies, or to any dispute resolution forum agreed to by the parties, without prejudice to any claims or defenses available to any party;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those sums specifically enumerated herein; and,
3. Any and all relief not specifically addressed herein 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 = \$ 150.00

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 person at the time of the events giving rise to the dispute. Accordingly, FBT Investments, Inc. is a party and the following Member Fees are assessed:

Member surcharge = \$ 600.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$1,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

Forum Fees and Assessments

The Arbitrator 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 = \$ 900.00
Pre-hearing conferences: July 25, 2003 1 session
August 20, 2003 1 session

Total Forum Fees = \$ 900.00

The Arbitrator has assessed \$450.00 of the forum fees to Claimant Lee Jackson and \$450.00 of the forum fees jointly and severally to Respondents Laura A. Pentimone and FBT Investments, Inc.

SEE SUMMARY

Claimant Lee Jackson is solely liable for:

Initial Filing Fee = \$ 150.00
Forum Fees = \$ 450.00
Total Fees = \$ 600.00
Less payments = \$ 600.00
Balance Due NASD Dispute Resolution = \$ 0.00

Respondent FBT Investments, Inc. is solely liable for:

Member Fees = \$2,350.00
Less payments = \$2,350.00
Balance Due NASD Dispute Resolution = \$ 0.00

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Respondents Laura A. Pentimone and FBT Investments, Inc. are jointly and severally liable for:

Forum Fees	= \$ 450.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 450.00

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

ARBITRATION PANEL

Kathy L. Eisenmenger, Esq. - Public Arbitrator, Presiding Chairperson

Arbitrator's Signature

Kathy L. Eisenmenger

Kathy L. Eisenmenger, Esq.

Public Arbitrator, Presiding Chairperson

September 25, 2003

Signature Date

9/26/03 llm

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