

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

F. Philip Kessler, Jr., d/b/a F.P. Kessler, Jr. & Associates and New England Securities Corporation (Claimants) vs. Garry R.M. Payne (Respondent)

Case Number: 03-01413

Hearing Site: Buffalo, New York

Nature of the Dispute: Associated Person and Member vs. Associated Person.

REPRESENTATION OF PARTIES

Claimants F. Philip Kessler, Jr., d/b/a F.P. Kessler, Jr. & Associates ("Kessler") and New England Securities Corporation ("New England"), hereinafter collectively referred to as ("Claimants"): Richard C. Engel, Esq., Mackenzie Hughes, LLP Syracuse, NY.

Respondent Garry R. M. Payne ("Payne") hereinafter referred to as ("Respondent"): Steven L. Manchel, Esq., Davidson, Manchel & Brennan, LLP Newton, MA; previously represented by John McDermott, Esq., McDermott, Doerr & Britt Syracuse, NY.

CASE INFORMATION

Statement of Claim filed on or about: February 26, 2003.

Amended Statement of Claim filed on or about: March 10, 2004.

Claimant Kessler signed the Uniform Submission Agreement: February 26, 2003.

Claimant New England signed the Uniform Submission Agreement: March 10, 2004.

Statement of Answer and Motion to Dismiss filed by Respondent on or about: May 2, 2003.

Respondent's Response to the Amended Statement of Claim filed on or about: April 26, 2004.

Respondent did not submit a signed Uniform Submission Agreement.

CASE SUMMARY

Claimant Kessler asserted the following causes of action: breach of written contract; misappropriation of confidential information, proprietary information and trade secrets; and request for injunction.

In the Amended Statement of Claim, Claimants asserted the following causes of action: breach of agreement, misappropriation of trade secrets, soliciting business and request for injunction

Unless specifically admitted in his Answer and Amended Answer, Respondent denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant Kessler requested: (a) enjoining Respondent from, directly or indirectly contacting or contracting with any agent of Claimant, including employing such agents, for the purpose of inducing such agents to solicit in Claimant's territory on behalf of any other insurance company or financial services organization; (b) award of compensatory damages to be determined at trial; (c) award of all costs and expenses including reasonable attorneys' fees incurred in pursuing the relief requested in this complaint; and (d) such other and further relief as the court may deem just and proper.

In the Amended Statement of Claim, Claimants requested: (a) enjoining Respondent from, directly or indirectly, contacting or contracting with any agent of Kessler, including employing such agents, for the purpose of inducing such agents to solicit in Kessler's territory on behalf of any other insurance company or financial services organization; (b) awarding Claimants recovery of compensatory damages in an amount to be determined at trial; (c) awarding Claimants recovery from Respondent of all costs and expenses incurred in pursuing the relief requested in this complaint, including reasonable attorneys' fees; and (d) awarding other such further relief as the court may deem just and proper.

Respondent requested in the Statement of Answer and Amended Answer that the Panel dismiss all of the claims asserted against him, with prejudice, and award him attorneys' fees and costs incurred in defending this case.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing the Panel considered Respondent's Motion to Dismiss, after due deliberation, the Panel denied the Motion.

At the hearing, the Panel considered Respondent's Motion for Directed Verdict, after due deliberation, the Panel granted the Motion.

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, 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. Claimants' claims are denied in their entirety.
2. 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	= \$ 250.00
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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 person at the time of the events giving rise to the dispute. Accordingly, New England Securities Corporation is a party.

Member Surcharge	= \$ 1,500.00
Pre-hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,200.00</u>
Total Member Fees	= \$ 4,450.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

January 6, 7 & 8, 2004 adjournment by Claimant	= \$ 500.00
January 6, 7 & 8, 2004 adjournment by Respondent	= \$ 500.00

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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimant requested duplication of tapes = \$ 30.00

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.

1. Claimant Kessler is assessed:
Injunctive relief surcharge = \$ 2,500.00

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 @ \$1000.00 per session = \$ 3,000.00
Pre-hearing conferences: October 1, 2003 1 session
 October 16, 2003 1 session
 March 22, 2004 1 session

Eight (8) Hearing sessions with Panel @ \$ 1000.00 per session = \$ 8,000.00
Hearing Dates: February 10, 2004 2 sessions
 October 18, 2005 2 sessions
 October 19, 2005 3 sessions
 October 20, 2005 1 session

Total Forum Fees = \$ 11,000.00

1. The Panel has assessed \$11,000.00 of the forum fees jointly and severally to Claimants Kessler and New England Securities Corporation.

Fee Summary

1. Claimant Kessler is solely liable for:
Initial Filing Fee = \$ 250.00
Injunctive Relief Fees = \$ 2,500.00
Adjournment Fee = \$ 500.00
Administrative Cost = \$ 30.00

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Total Fees	= \$ 3,280.00
<u>Less payments</u>	= \$ 3,280.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Claimant New England Securities Corporation is solely liable for:

<u>Member Fees</u>	= \$ 4,450.00
Total Fees	= \$ 4,450.00
<u>Less Payment</u>	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Claimants are jointly and severally liable for:

<u>Forum Fees</u>	= \$11,000.00
Total Fees	= \$11,000.00
<u>Less Payment</u>	= \$ 2,970.00
Balance Due NASD Dispute Resolution	= \$ 8,030.00

4. Respondent is solely liable for:

<u>Adjournment Fee</u>	= \$ 500.00
Total Fees	= \$ 500.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 500.00

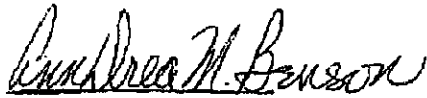
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

AnnDrea M. Benson, Esq.	- Non-Public Arbitrator, Presiding Chairperson
Birgitta K. Siegel, Esq.	- Non-Public Arbitrator
Patrick M. Markey	- 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.



AnnDrea M. Benson, Esq.
Non-Public Arbitrator, Presiding Chairperson

11-9-05

Signature Date

Birgitta K. Siegel, Esq.
Non-Public Arbitrator

Signature Date

Patrick M. Markey
Non-Public Arbitrator

Signature Date

November 4, 2005

Date of Service (For NASD Dispute Resolution use only)

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Non-Public Arbitrator, Presiding Chairperson

Signature Date

Birgitta K. Siegel, Esq.

Birgitta K. Siegel, Esq.
Non-Public Arbitrator

11/4/05

Signature Date

Patrick M. Markey
Non-Public Arbitrator

Signature Date

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

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Non-Public Arbitrator, Presiding Chairperson

Signature Date

Birgitta K. Siegel, Esq.
Non-Public Arbitrator

Signature Date



Patrick M. Markey
Non-Public Arbitrator

11/3/05

Signature Date

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