
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Frank H. Henderson, II

Case Number: 03-01543

Names of the Respondents
The Malachi Group, Inc.
Porter Bingham

Hearing Site: Little Rock, AR

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

REPRESENTATION OF PARTIES

For Frank H. Henderson, II, hereinafter referred to as "Claimant": Gary P. Barket, Esq., Little Rock, AR.

For The Malachi Group, Inc. ("Malachi") and Porter Bingham ("Bingham"), hereinafter collectively referred to as "Respondents": Harold G. Ognelodh, Esq., Ognelodh & Partners, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: March 4, 2003.

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

Statement of Answer filed by Respondents on or about: June 16, 2003.

Respondent Bingham signed the Uniform Submission Agreement: June 16, 2003.

Respondent Malachi did not file an executed Uniform Submission Agreement.

Motion to Strike Answer filed by Claimant on or about: June 19, 2003.

Response to Motion to Strike Answer filed by Respondents on or about: October 7, 2003.

CASE SUMMARY

Claimant asserted that Respondents failed to pay him commissions in accordance with his employment contract.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested unpaid commissions of \$47,800.00, interest of \$3,585.00, filing fees of \$2,050.00, reimbursement of \$10,000.00 for time spent prosecuting this claim, and punitive

damages of \$20,000.00.

Respondents requested dismissal of the Statement of Claim, expungement of all references to the above-captioned arbitration from Respondent Bingham's registration records maintained by the NASD Central Registration Depository ("CRD"), that all costs be assessed against Claimant, and such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about October 16, 2003, the undersigned arbitrators (the "Panel") issued an order which denied Claimant's Motion to Strike.

Respondent Malachi did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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:

Respondents are liable, jointly and severally, and shall pay to Claimant compensatory damages in the sum of \$76,677.00 plus interest at the rate of 1.25% per annum accruing from December 13, 2002 until the date of payment of the Award.

Respondents are liable, jointly and severally, and shall pay to Claimant attorneys' fees in the amount of \$6,400.00 pursuant to Arkansas Annotated Code 16-22-308 and Rule 10215 of the Code.

Respondents are liable, jointly and severally, and shall pay to Claimant costs in the amount of \$775.00 pursuant to Arkansas Annotated Code 16-22-308 and Rule 10215 of the Code.

Respondents are liable, jointly and severally, and shall pay to Claimant the sum of \$225.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages and Respondent Bingham's request for an expungement, are 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 = \$ 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 Malachi is a party and a member firm.

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:

No requests for adjournments were granted during these proceedings for which fees were assessed.

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.

No injunctive relief fees were assessed during these proceedings.

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:

One (1) Pre-hearing session with the Panel @ \$750.00	= \$ 750.00
Pre-hearing conference: October 15, 2003	1 session
Two (2) Hearing sessions @ \$750.00	= \$1,500.00
Hearing Date: December 8, 2003	2 sessions
Total Forum Fees	= \$2,250.00

The Panel has assessed the total forum fees of \$2,250.00 jointly and severally to Respondents.

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.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 225.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent Malachi is solely liable for:

<u>Member Fees</u>	= \$ 3,550.00
<u>Total Fees</u>	= \$ 3,550.00
<u>Less payments</u>	= \$ 1,850.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,700.00

Respondents Malachi and Bingham are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 2,250.00
<u>Total Fees</u>	= \$ 2,250.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 2,250.00

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

ARBITRATION PANEL

Robert L. Lanford	-	Non-Public Arbitrator, Presiding Chairperson
Donna J. Young	-	Non-Public Arbitrator
Ronald R. Wilhelm	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Robert L. Lanford
Non-Public Arbitrator, Presiding Chairperson

Signature Date

/s/
Donna J. Young
Non-Public Arbitrator

Signature Date

/s/
Ronald R. Wilhelm
Non-Public Arbitrator

Signature Date

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

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 Robert L. Lanford
 Non-Public Arbitrator, Presiding Chairperson

01-04-04
 Signature Date

 Donna J. Young
 Non-Public Arbitrator

 Signature Date

NASD Dispute Resolution
Arbitration No. 03-01543
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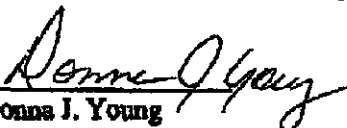
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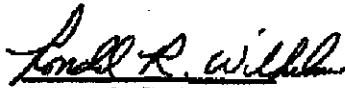
Robert L. Lanford
Non-Public Arbitrator, Presiding Chairperson


Donna J. Young
Non-Public Arbitrator

Signature Date

1-9-04
Signature Date

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Ronald R. Wilhelm
Non-Public Arbitrator

January 6, 2004
Signature Date

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