

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Cyclean, Inc.

Case Number: 03-01594

Name of the Respondent
Commonwealth Equity Services, Inc.

Hearing Site: Baltimore, MD

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

Claimant, Cyclean, Inc. "was represented by Dana Whitehead McKee, Esq., Brown Goldstein Levy, LLP, Baltimore, Maryland.

Respondent, Commonwealth Equity Services, Inc., was represented by Gilbert W. Boyce, Esq., Kutak Rock, LLP, Washington, DC.

CASE INFORMATION

Statement of Claim filed on February 28, 2003.

President of Cyclean, Inc. executed the Uniform Submission Agreement on January 23, 2003.

Statement of Answer filed by Respondent on April 30, 2003.

Claimant did not file a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action, among others: breach of contract and misrepresentations. The causes of action relate to the indemnification provision in the Selling Agreement signed by Respondent.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimant's claim fails to state a claim upon which relief may be granted; Claimant's claim is barred because it fails to comply with all conditions precedent which could entitle it to the relief it seeks, failure to mitigate damages, Claimant's claim is barred by the doctrine of *pari delicto*, and Claimant's claim is barred by the principles of comparative contribution and/or comparative indemnification.

RELIEF REQUESTED

Claimant in its Statement of Claim requested:

Compensatory Damages

\$87,424.08

Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondent in its Statement of Answer requested that Claimant's claim be denied in its entirety and that all forum fees be assessed to Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

1. Respondent is liable to and shall pay to Claimant compensatory damages in the amount of \$69,000.00;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
3. Any and all relief not specifically addressed herein is denied in its entirety.

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
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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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly Morgan Stanley is 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

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 Panel @ \$750.00	= \$ 750.00
Pre-hearing conference: May 14, 2004 1 session	
Six (6) Hearing sessions @ \$750.00	= \$4,500.00
Hearing Dates: October 13, 2004 2 sessions	
October 14, 2004 2 sessions	
October 15, 2004 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$5,250.00

1. The Panel has assessed \$2,625.00 of the forum fees to Claimant.
2. The Panel has assessed \$2,625.00 of the forum fees to Respondent.

FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:	
Initial Filing Fee	= \$ 225.00
Forum Fees	= \$2,625.00
Total Fees	= \$2,850.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$1,875.00
2. Respondent is assessed and shall pay the following fees:	
Member Fees	= \$3,550.00
Forum Fees	= \$2,625.00
Total Fees	= \$6,175.00
Less payments	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$2,625.00

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

ARBITRATION PANEL

Thomas R. Kline, Esq.	-	Public Arbitrator, Presiding Chairperson
Samuel R. Johnson	-	Public Arbitrator, Panelist
W. Thomas Gehrt	-	Non-Public Arbitrator, Panelist

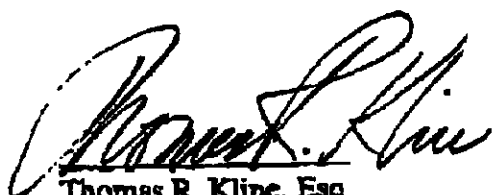
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NASD DISPUTE RESOLUTION

005/005

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Concurring Arbitrators' Signatures



Thomas R. Kline, Esq
Public Arbitrator, Presiding Chairperson

Oct. 23, 2004
Signature Date

Samuel R. Johnson
Public Arbitrator, Panelist

Signature Date

W. Thomas Gehrt
Non-Public Arbitrator, Panelist

Signature Date

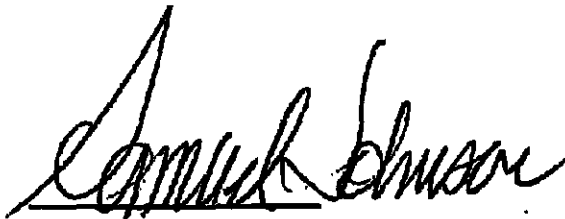
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Date of Service (For NASD Dispute Resolution office use only)

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Concurring Arbitrators' Signatures

Thomas R. Kline, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Samuel R. Johnson
Public Arbitrator, Panelist

22 October 2004
Signature Date

W. Thomas Gehrt
Non-Public Arbitrator, Panelist

Signature Date

10/25/04

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

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Concerning Arbitrators' Signatures

Thomas R. Kline, Esq
Public Arbitrator, Presiding Chairperson

Signature Date

Samuel R. Johnson
Public Arbitrator, Panelist

Signature Date


W. Thomas Gehrt
Non-Public Arbitrator, Panelist

10-22-04
Signature Date

10/25/04
Date of Service (For NASD Dispute Resolution office use only)