

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Investec (US) Incorporated (Claimant) v. David Karlin (Respondent)

Case Number: 03-01633

Hearing Site: New York, New York

Nature of the Dispute: Member vs. Associated Person.

REPRESENTATION OF PARTIES

Claimant Investec (US) Incorporated ("Investec") hereinafter referred to as "Claimant": Joseph DaProcida, Esq., Investec (US) Incorporated, New York, NY. The previous Claimant, Maxim Group, LLC, was represented by James Siegel, Maxim Group, LLC, Woodbury, NY.

Respondent David Karlin ("Karlin") hereinafter referred to as "Respondent": Brendan R. Marx, Esq., Eaton & Van Winkle, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: March 5, 2003.

Claimant's Response to Respondent's Answering Statement and Counterclaim filed on or about: May 20, 2003.

Amended Statement of Claim filed on or about: January 26, 2004.

Claimant signed the Uniform Submission Agreement: March 5, 2003 and January 26, 2004.

Statement of Answer and Counterclaim filed by Respondent on or about: May 1, 2003.

Answer to the Amended Statement of Claim filed by Respondent on or about: February 10, 2004.

Respondent signed the Uniform Submission Agreement: April 30, 2003.

CASE SUMMARY

In the Statement of Claim and Amended Statement of Claim, Claimant asserted the following causes of action: breach of employment agreement; failure to repay monies owed pursuant to the terms of an Employee Forgivable Loan; and excess commissions. Unless specifically admitted in its Response to Respondent's Answering Statement and Counterclaim, Claimant denied the allegations made in the Counterclaim.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In his Counterclaim, Respondent asserted the following cause of action: breach of contract.

Unless specifically admitted in his Answer to Amended Statement of Claim, Respondent denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$32,069.67, together with 15% interest; costs, including reasonable attorneys' fees; and other relief as the arbitrators may deem proper.

In the Amended Statement of Claim, Claimant requested the principal amount due on the note in the amount of \$23,796.50; interest at a rate of 10% per annum accrued from December 28, 2000 to January 24, 2003 or \$4,928.07; default interest at a rate of 14% from January 24, 2003 through the date of the award; the sum of \$14,430.01 in connection with Claimant's claim for excess commissions pursuant to Paragraph 6 of the Employment Agreement; and costs.

In its Response to Respondents' Answering Statement and Counterclaim, Claimant reiterated its request for the sum of \$32,069.67 together with 15% interest; costs, including reasonable attorneys' fees; additional relief as the arbitrators may deem just and proper; and a complete dismissal of the Respondent's Counterclaim.

In his Answer and Counterclaim and Answer to the Amended Statement of Claim, Respondent requested dismissal of Claimant's Statement of Claim; an award of the costs and disbursements of this proceeding, including administrative fees, arbitrators' fees, attorneys' fees, and such other and further relief as the arbitrators deem just and proper; and damages in an amount to be determined at the hearing with respect to Respondent's Counterclaim.

OTHER ISSUES CONSIDERED AND DECIDED

The claims asserted in this arbitration were previously lodged against Respondent David Karlin by Maxim Group, LLC ("Maxim"). Pursuant to an assignment agreement dated November 26, 2003, Investec assumed the rights and obligations of Maxim with respect to this arbitration. On December 19, 2003, Respondent filed a motion to dismiss this arbitration, alleging due to the assignment, Maxim had no standing to assert the claims alleged herein. On January 13, 2004, the Panel denied Respondent's motion and authorized Investec to file an Amended Statement of Claim.

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 is liable and shall pay to Claimant compensatory damages in the amount of \$56,231.10.
2. The Counterclaims of Respondent are dismissed 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	= \$1,000.00
Counterclaim filing fee	= \$ 250.00

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, Maxim Group, LLC is a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

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, Investec (US) Incorporated is a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

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:

Four (4) Pre-hearing sessions with Panel @ \$1,000.00	= \$4,000.00
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Pre-hearing conferences:	September 5, 2003	1 session
	January 13, 2004	1 session
	January 27, 2004	1 session
	March 12, 2004	1 session

Two (2) Hearing sessions @ \$1,000.00 = \$2,000.00

Hearing Date: April 27, 2004 2 sessions

Total Forum Fees = \$6,000.00

1. The Panel has assessed \$6,000.00 of the forum fees against Respondent.

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.

1. Maxim requested photocopies = \$15.75

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$6,450.00
Administrative Costs	= \$ 15.75
Total Fees	= \$7,465.75
Less payments	= \$7,900.00
Refund due to Claimant	= \$ 434.25

2. Respondent is solely liable for:

Counterclaim Filing Fee	= \$ 250.00
Forum Fees	= \$6,000.00
Total Fees	= \$6,250.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$6,250.00


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

ARBITRATION PANEL

Leonard Morton Ginsberg - Non-Public Arbitrator, Presiding Chair
Andrew Reegen - Non-Public Arbitrator
Jerald Alan Belofsky, 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.



Leonard Morton Ginsberg
Non-Public Arbitrator, Presiding Chairperson

4/8/03

Signature Date

Andrew Reegen
Non-Public Arbitrator

Signature Date

Jerald Alan Belofsky, Esq
Non-Public Arbitrator

Signature Date

May 6, 2004

Date of Service (For NASD Dispute Resolution use only)

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Leonard Morton Ginsberg
Non-Public Arbitrator, Presiding Chairperson

Signature Date



Andrew Reegen
Non-Public Arbitrator

05/03/2004
Signature Date

Jerald Alan Belofsky, Esq.
Non-Public Arbitrator

Signature Date

May 6, 2004
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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Andrew Reegen - Non-Public Arbitrator
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Non-Public Arbitrator, Presiding Chairperson

Signature Date

Andrew Reegen
Non-Public Arbitrator

Signature Date


Jerald Alan Belofsky, Esq.
Non-Public Arbitrator

5/4/04

Signature Date

May 6, 2004

Date of Service (For NASD Dispute Resolution use only)