

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Columbus Circle Investors (Claimant) v. Michael Julian (Respondent)

and

Michael F. Julian (Claimant) v. Columbus Circle Investors (Respondent)

Case Number: 03-02208 (consolidated with 03-02397)

Hearing Site: New York, New York

Nature of the Dispute: Non-Member v. Associated Person (03-02208)
Associated Person v. Non-Member (03-02397)

REPRESENTATION OF PARTIES

03-02208

Claimant Columbus Circle Investors ("CCI") hereinafter referred to as "Claimant": John C. Blessington, Esq., Kirkpatrick & Lockhart, LLP, Boston, MA.

Respondent Michael Julian ("Julian") hereinafter referred to as "Respondent": William J. Foster, IV, Esq., McMillan Constabile, LLP, Larchmont, NY.

03-02397

Claimant Michael F. Julian ("Julian") hereinafter referred to as "Claimant": William J. Foster, IV, Esq., McMillan Constabile, LLP, Larchmont, NY.

Respondent Columbus Circle Investors ("CCI") hereinafter referred to as "Respondent": John C. Blessington, Esq., Kirkpatrick & Lockhart, LLP, Boston, MA.

CASE INFORMATION

03-02208

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

Answer to Counterclaim filed on or about: June 11, 2003.

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

CCI signed the Uniform Submission Agreement: March 25, 2003.

Statement of Answer and Counterclaim filed by Respondent on or about: May 28, 2003.
Julian signed the Uniform Submission Agreement: May 28, 2003.

03-02397

Statement of Claim filed on or about: April 1, 2003.
Julian signed the Uniform Submission Agreement: March 31, 2003.

Answer and Counterclaim filed on or about: May 30, 2003.
CCI did not sign a Uniform Submission Agreement.

CASE SUMMARY

03-02208

Claimant CCI asserted the following cause of action: breach of a Finder's Fee Agreement entered into by the parties on December 1, 1989. Unless specifically admitted in its Answer to the Counterclaim, CCI denied the allegations made in the Counterclaim and asserted various affirmative defenses (CCI adopted and incorporated the Answer filed in 03-02397).

In the Amended Statement of Claim, CCI asserted the following causes of action: breach of a Finder's Fee Agreement entered into by the parties on December 1, 1989; and unjust enrichment.

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

03-02397

Claimant Julian asserted the following causes of action: breach of contract and indemnification.

Unless specifically admitted in its Answer, Respondent CCI denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Counterclaim, CCI asserted the following causes of action: breach of a Finder's Fee Agreement entered into by the parties on December 1, 1989.

RELIEF REQUESTED

03-02208

In the Statement of Claim, Claimant CCI sought a declaration that Julian's failure to

solicit clients for CCI constituted a breach of the Finder's Agreement; a further declaration that as a result of that breach, CCI is no longer obligated to perform and pay Julian a fee for the Advisory Agreement with the National Elevator Industry Pension Fund as contemplated by Section 9(c) of the Finder's Agreement; damages in an amount to be determined, including a return of any or all of the amounts paid by CCI to Julian; damages for overpayments that CCI has made; and damages in the amount of \$39,324.00 for overpayment.

In the Amended Statement of Claim, CCI requested a declaration that, as a result of the breaches, CCI is no longer obligated to perform and pay Julian a fee for the Advisory Agreement with the National Elevator Industry Pension Fund as contemplated by Section 9(c) of the Finder's Agreement; damages in the amount of \$1,000,000.00 for the return of all of the amount paid by CCI to Julian; a return of the \$39,324.00 that was overpaid by CCI to Julian; attorneys' fees and costs as provided by Section 5 of the Finder's Agreement; and any such damages the Panel deems just and necessary.

Respondent Julian requested that the Panel deny the relief sought by CCI, including a ruling that the Finder's Fee Agreement dated December 1, 1989, is an enforceable agreement in accordance with the terms contained therein; money damages for CCI's breach of contract which includes three quarterly payments of the 10% fee due the Finder under the agreement; indemnifying Julian for the costs and expenses as provided for in paragraph 5 of the Agreement; and such other relief as the Panel may deem just and proper.

03-02397

Claimant Julian requested money damages for Respondent CCI's breach of contract in the amount of \$100,000.00; costs and expenses, including attorneys' fees; and such other and further relief as the Panel may deem just and proper.

Respondent CCI requested a declaration that Julian's failure to solicit clients for CCI constituted a breach of the Finder's Agreement; a further declaration that as a result of that breach, CCI is no longer obligated to perform and pay Julian a fee for the Advisory Agreement with the National Elevator Industry Pension Fund as contemplated by Section 9(c) of the Finder's Agreement; damages in an amount to be determined, including a return of any or all of the amounts paid by CCI to Julian; damages for overpayments that CCI has made; and damages in the amount of \$39,324.00 for overpayment.

OTHER ISSUES CONSIDERED AND DECIDED

In NASD Dispute Resolution ("NASD DR") Arbitration No. 03-02397, Respondent CCI did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having

answered the claim, and appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On or about July 9, 2003, the parties filed a Stipulation to Consolidate NASD DR Arbitration No. 03-02208 with NASD DR Arbitration No. 03-02397. On or about December 2, 2003, the Panel in NASD DR Arbitration No. 03-02208 conducted a telephonic pre-hearing conference. The Panel considered the consolidation of these two cases at the pre-hearing conference and determined to grant the request for consolidation.

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 and post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant CCI's Amended Statement of Claim is dismissed in its entirety.
2. Claimant CCI is liable for and shall pay to Respondent Julian monetary damages in the amount of \$180,000.00 for fees and interest due to Respondent as of September 30, 2004.
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:

03-02208

Initial claim filing fee	= \$500.00
Julian's Counterclaim filing fee	= \$250.00

03-02397

Initial claim filing fee	= \$225.00
CCI's Counterclaim filing fee	= \$175.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

February 10-11, 2004, joint adjournment request	= Waived
---	----------

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:

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: December 2, 2003 1 session	

Four (4) Hearing sessions @ \$1,200.00	= \$4,800.00
Hearing Dates: September 15, 2004 2 sessions	
September 16, 2004 2 sessions	

Total Forum Fees	= \$6,000.00
------------------	--------------

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

Fee Summary

1. CCI is solely liable for:

Initial Filing Fee (03-02208)	= \$ 500.00
Counterclaim Filing Fee (03-02397)	= \$ 175.00
<u>Forum Fees</u>	<u>= \$6,000.00</u>
Total Fees	= \$6,675.00
<u>Less payments</u>	<u>= \$3,670.76</u>
Balance Due NASD Dispute Resolution	= \$3,004.24

2. Julian is solely liable for:

Filing Fee (03-02397)	= \$ 225.00
Counterclaim Filing Fee (03-02208)	= \$ 250.00
Total Fees	= \$ 475.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Refund Due Julian	= \$ 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

Christine Moore, Esq.	-	Public Arbitrator, Presiding Chairperson
Bernard A. Hall	-	Public Arbitrator
Henry C. Maine, Esq.	-	Non-Public Arbitrator

Consenting Arbitrator's Signature

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7307 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my name.


Christine Moore, Esq.
Public Arbitrator, Presiding Chairperson

12/3/04
Signature Date

Bernard A. Hall
Public Arbitrator

Signature Date

Consenting in Part, Dissenting in Part Arbitrator's Signature

The undersigned arbitrator would include the following language in the Award: "The Finder's Fee Agreement, dated December 1, 1989, is an enforceable agreement in accordance with the terms contained therein."

Henry C. Maine, Esq.
Non-Public Arbitrator

Signature Date

December 3, 2004
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

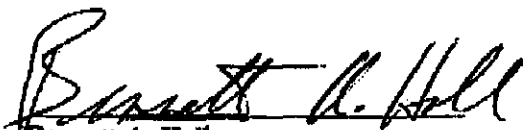
Christine Moore, Esq.	-	Public Arbitrator, Presiding Chairperson
Bennett A. Hall	-	Public Arbitrator
Henry C. Malon, Esq.	-	Non-Public Arbitrator

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 in which is my award.

Christine Moore, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Bennett A. Hall
Public Arbitrator


Signature Date

Concurring in Part, Dissenting in Part Arbitrator's Signature

The undersigned arbitrator would include the following language in the Award: "The Finder's Fee Agreement, dated December 1, 1989, is an enforceable agreement in accordance with the terms contained therein."

Henry C. Malon, Esq.
Non-Public Arbitrator

Signature Date

December 3, 2004
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Christine Moore, Esq.	-	Public Arbitrator, Presiding Chairperson
Bennett A. Hall	-	Public Arbitrator
Henry C. Malon, 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 is which is my award.

Christine Moore, Esq.
Public Arbitrator, Presiding Chairperson

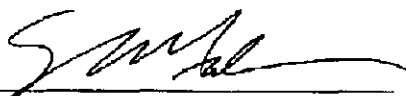
Signature Date

Bennett A. Hall
Public Arbitrator

Signature Date

Concurring in Part, Dissenting in Part Arbitrator's Signature

The undersigned arbitrator would include the following language in the Award: "The Finder's Fee Agreement, dated December 1, 1989, is an enforceable agreement in accordance with the terms contained therein."



Henry C. Malon, Esq.
Non-Public Arbitrator

12/2/04

Signature Date

December 3, 2004
Date of Service (For NASD Dispute Resolution use only)