

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Monica Triozzi (Claimant) v. Heights Partners, Inc., Richard Polatchek, Lawrence Polatchek, and James Pappas (Respondents)

Case Number: 03-03609

Hearing Site: New York, New York

Nature of the Dispute: Associated Person v. Member and Associated Persons.

REPRESENTATION OF PARTIES

Claimant Monica Triozzi ("Triozzi") hereinafter referred to as "Claimant": Martin I. Kaminsky, Esq., Pollack & Kaminsky, New York, NY.

Respondents Heights Partners, Inc. ("Heights Partners"), Richard Polatchek ("R. Polatchek"), Lawrence Polatchek ("L. Polatchek"), and James Pappas ("Pappas") hereinafter collectively referred to as "Respondents": Adam D. Mitzner, Esq., Morea & Schwartz, P.C., New York, NY. Previously represented by: Daniel C. Zinman, Esq., Richard Spears Kibbe & Orbe, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: May 15, 2003.

Reply to Answer and Motion filed on or about: July 29, 2003.

Amended Statement of Claim filed on or about: August 12, 2004.

Claimant signed the Uniform Submission Agreement: May 16, 2003.

Joint Statement of Answer and Motion to Dismiss, or in the alternative, Motion for a More Definite Statement filed by Respondents on or about: July 17, 2003.

Opposition to Claimant's Motion to Amend the Statement of Claim filed by Respondents on or about: September 7, 2004.

Respondent Heights Partners signed the Uniform Submission Agreement: July 24, 2003.

Respondent R. Polatchek signed the Uniform Submission Agreement: July 17, 2003.

Respondent L. Polatchek signed the Uniform Submission Agreement: July 17, 2003.

Respondent Pappas signed the Uniform Submission Agreement: July 17, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: failure to pay owed compensation and breach of fiduciary duty.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$1,000,000.00 and punitive damages.

In the Amended Statement of Claim, Claimant requested compensatory damages in the amount of \$4,000,000.00, plus interest; punitive damages; and costs and fees.

Respondents requested that the Panel dismiss the Statement of Claim, or in the alternative, an order that Claimant file a more definite Statement of Claim alleging all relevant facts underlying her claim.

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, 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. The claims of Claimant against Respondents R. Polatchek and L. Polatchek are dismissed in their entirety.
2. Respondents Heights Partners and Pappas are jointly and severally liable for and shall pay to Claimant salary in the amount of \$5,365.00; bonus in the amount of \$137,000.00; and severance in the amount of \$125,000.00.
3. Respondents Heights Partners and Pappas are jointly and severally liable for and shall pay to Claimant interest at the rate of 9% per annum on the bonus and salary amounts from January 1, 2003 through the date the award is paid in full.
4. Any and all relief not specifically addressed herein, including punitive damages, is denied.
5. If a motion to vacate is filed in court and the motion is denied, this Panel respectfully recommends to the Court that any costs and fees related to the motion be assessed against the moving party.

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 = \$600.00

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 persons at the time of the events giving rise to the dispute. Accordingly, Heights Partners, Inc. is a party.

Member surcharge = \$2,800.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$5,000.00

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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$ 450.00
Pre-hearing conference: September 8, 2004 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 = \$2,400.00
Pre-hearing conferences: November 21, 2003 1 session
September 9, 2004 1 session

Five (5) Hearing sessions @ \$1,200.00 = \$6,000.00
Hearing Dates: September 27, 2004 2 sessions
September 28, 2004 2 sessions
September 29, 2004 1 session

Total Forum Fees = \$8,850.00

1. The Panel has assessed 100% of the forum fees for the September 8, 2004 conference call (\$450.00); 50% of the forum fees for the November 21, 2003 conference call (\$600.00); 100% of the forum fees for the September 9, 2004 conference call (\$1,200.00); and 50% of the forum fees for the September 27-29, 2004 hearing sessions (\$3,000.00) for a total amount of \$5,250.00 of forum fees against Claimant.
2. The Panel has assessed the 50% of the forum fees for the November 21, 2003 conference call (\$600.00); and 50% of the forum fees for the September 27-29, 2004

hearing sessions (\$3,000.00) for a total amount of \$3,600.00 of forum fees jointly and severally against Respondents Heights Partners and Pappas.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$5,250.00
Total Fees	= \$5,850.00
<u>Less payments</u>	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$4,275.00

2. Respondent Heights Partners is solely liable for:

<u>Member Fees</u>	= \$8,550.00
Total Fees	= \$8,550.00
<u>Less payments</u>	= \$7,100.00
Balance Due NASD Dispute Resolution	= \$1,450.00

3. Respondents Heights Partners and Pappas are jointly and severally liable for:

<u>Forum Fees</u>	= \$3,600.00
Total Fees	= \$3,600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,600.00

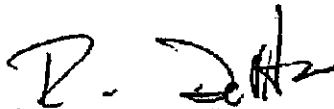
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code

ARBITRATION PANEL

Richard D. DeVita, Esq.	-	Public Arbitrator, Presiding Chairperson
Joanne Barak	-	Public Arbitrator
David Denison	-	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.



Richard D. DeVita, Esq.
Public Arbitrator, Presiding Chairperson

10/12/04
Signature Date

Joanne Barak
Public Arbitrator

Signature Date

David Denison
Non-Public Arbitrator

Signature Date

October 13, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

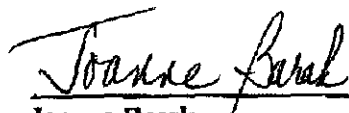
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Joanne Barak	-	Public Arbitrator
David Denison	-	Non-Public Arbitrator

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Richard D. DeVita, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Joanne Barak
Public Arbitrator



Signature Date

David Denison
Non-Public Arbitrator

Signature Date

October 13, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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Joanne Barak	-	Public Arbitrator
David Denison	-	Non-Public Arbitrator

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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.

Richard D. DeVita, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Joanne Barak
Public Arbitrator

Signature Date



David Denison
Non-Public Arbitrator

October 7, 2004
Signature Date

October 13, 2004

Date of Service (For NASD Dispute Resolution use only)