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**Stipulated Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant

DeWitt G. Turner

Case Number: 03-03683

Names of the Respondents

Malachi Group, Inc.

Porter B. Bingham

Hearing Site: Atlanta, Georgia

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

**REPRESENTATION OF PARTIES**

For DeWitt G. Turner, hereinafter referred to as "Claimant": Glenn A. Delk, Esq., Lightmas & Delk, Atlanta, Georgia.

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

**CASE INFORMATION**

Statement of Claim filed on or about: April 30, 2003.

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

Statement of Answer filed by Respondents on or about: September 12, 2003.

Respondent MGI signed the Uniform Submission Agreement: September 22, 2003.

Respondent Bingham signed, but did not date, the Uniform Submission Agreement.

Request for Default Judgment filed by Claimant on or about: September 29, 2003.

**CASE SUMMARY**

Claimant asserted the cause of action of breach of employment contract against Respondents. The cause of action relates to the alleged failure of Respondents to pay to Claimant commissions due in connection with initial public offerings of Prudential Financial and Traveler's Insurance.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$22,868.54.

Respondents requested that the Statement of Claim be dismissed in its entirety, that an order which expunges all

references of this proceeding from the Central Registration Depository ("CRD") records of Respondent Bingham be issued, that the cost of this proceeding be assessed against Claimant, and that Respondents be awarded such other and further relief as deemed just and proper by the undersigned arbitrator (the "Arbitrator").

### **OTHER ISSUES CONSIDERED AND DECIDED**

Claimant asserted claims against two non-members of NASD whose submissions to the jurisdiction of NASD Dispute Resolution were voluntary. The non-members declined to voluntarily submit to the jurisdiction of NASD Dispute Resolution.

On or about May 24, 2004, the parties filed with NASD Dispute Resolution a notice of settlement, as well as a proposed Stipulated Award for review and approval by the Arbitrator.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

### **AWARD**

After considering the pleadings and the proposed Stipulated Award submitted by the parties, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant and Respondents have entered into a settlement agreement, whereby Respondents have agreed to make a payment to Claimant in the amount of Eight Thousand Dollars and No Cents (\$8,000.00), payable as follows: Four Thousand Dollars and No Cents (\$4,000.00) on June 15, 2004, and Four Thousand Dollars and No Cents (\$4,000.00) on July 30, 2004. In the event of non-performance of all sums due and owing by July 30, 2004, Respondents shall pay interest at nine percent (9%) per annum from June 7, 2004 to the date of payment.
2. The claims against Respondents MGI and Bingham are hereby dismissed with prejudice.
3. The Arbitrator recommends that all references to the above-captioned arbitration be expunged from Respondent Bingham's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Bingham, at his cost, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. Respondents consent and authorize Claimant to confirm the Stipulated Award in the U.S. District Court for the Northern District of Georgia or any other court having jurisdiction over this matter on July 30, 2004 or thereafter, should Respondents not make payments as ordered.
5. Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 = \$125.00

**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 MGI is a member firm and a party.

Member surcharge = \$425.00

Total Member Fees = \$425.00

**Adjournment Fees**

No adjournments were requested in this matter.

**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 Arbitrator.

Injunctive relief fees were not assessed in this matter.

**Forum Fees and Assessments**

The Arbitrator 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:

Two (2) Pre-hearing sessions @ \$450.00/session = \$900.00

Pre-hearing conferences:	March 18, 2004	1 session
	March 25, 2004	1 session

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Total Forum Fees = \$900.00

Pursuant to the agreement of the parties, the Arbitrator has assessed the forum fees as follows:

\$350.00 to Claimant; and  
\$550.00 to Respondents, jointly and severally.

**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.

There were no administrative costs incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$125.00
Forum Fees	= \$350.00
Retained Hearing Session Deposit pursuant to Rule 10332(f) of the Code	= \$100.00
Total Fees	= \$575.00
Less Payments	= \$575.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MGI is solely liable for:

Member Fees	= \$ 425.00
Total Fees	= \$ 425.00
Less Payments	= \$ 425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$550.00
Total Fees	= \$550.00
Less Payments	= \$550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

**ARBITRATOR**

Marian Cover Dockery, Esq.

Non-Public Arbitrator

**Arbitrator's Signature**

/s/  
Marian Cover Dockery, Esq.  
Non-Public Arbitrator

6/7/04  
Signature Date

6/9/04  
Date of Service (For NASD Dispute Resolution office use only)

There were no administrative costs incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$125.00
Forum Fees	= \$350.00
<u>Retained Hearing Session Deposit pursuant to Rule 10332(f) of the Code</u>	<u>= \$100.00</u>
Total Fees	= \$575.00
Less Payments	= \$575.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MGI is solely liable for:

<u>Member Fees</u>	<u>= \$ 425.00</u>
Total Fees	= \$ 425.00
Less Payments	= \$ 425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:


<u>Forum Fees</u>	<u>= \$550.00</u>
Total Fees	= \$550.00
Less Payments	= \$550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

**ARBITRATOR**

Marian Cover Dockery, Esq.

Non-Public Arbitrator

**Arbitrator's Signature**

  
Marian Cover Dockery, Esq.  
Non-Public Arbitrator

June 7, 2004  
Signature Date

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