

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Sean C. Twomey (Claimant) v. Mallory Capital Group, LLC and A. Conrad Weymann, III (Respondents)

and

Terence M. Crikelair (Claimant) v. Mallory Capital Group, LLC, and A. Conrad Weymann, III (Respondents)

and

Christopher H. Aidone (Claimant) v. Mallory Capital Group, LLC, and A. Conrad Weymann, III (Respondents)

Case Number: 03-05469 (consolidated w/03-04660 and 03-06094)

Hearing Site: New York, New York

Nature of the Dispute: Associated Person v. Member and Associated Person (03-05469)
Associated Person v. Member and Associated Person (03-04660)
Associated Person v. Member and Associated Person (03-06094)

REPRESENTATION OF PARTIES

Claimant Sean C. Twomey ("Twomey"): R. Scott Garley, Esq., Gibbons, Del Deo, Dolan, Griffinger & Vecchione, P.C., New York, NY.

Claimant Terence M. Crikelair ("Crikelair"): Robert P. Dolian, Esq., Cummings & Lockwood, LLC, Stamford, CT.

Claimant Christopher H. Aidone ("Aidone"): Gerald S. Sack, Esq., Sack, Spector & Karsten, LLP, West Hartford, CT.

Twomey, Crikelair, and Aidone are hereinafter referred to as "Claimants".

Respondents Mallory Capital Group, LLC ("MCG") and A. Conrad Weymann, III ("Weymann") hereinafter collectively referred to as "Respondents": Steven Altman, Esq., Altman & Company, P.C., New York, NY. Previously represented by: Conrad S. Kee, Esq., Jackson Lewis, LLP, Stamford, CT.

In NASD Dispute Resolution Arbitration Nos. 03-06094 and 03-04660, Respondents MCG and Weymann were represented by: Jeffrey M. Vona, Esq. and Conrad S. Kee,

Esq., Jackson Lewis, Stamford, CT.

CASE INFORMATION

03-05469

Statement of Claim filed on or about: July 25, 2003.
Reply to Counterclaims filed on or about: October 3, 2003.
Claimant Twomey signed the Uniform Submission Agreement: July 24, 2003.

Answering Statement and Counterclaims filed by Respondents on or about: September 19, 2003.
Respondent MCG signed the Uniform Submission Agreement: September 18, 2003.
Respondent Weymann did not sign the Uniform Submission Agreement.

03-04660

Statement of Claim filed on or about: June 25, 2003.
Reply to Counterclaims filed on or about: August 27, 2003.
Claimant Crikelair signed the Uniform Submission Agreement: June 25, 2003.

Answering Statement and Counterclaims filed by Respondents on or about: August 19, 2003.
Respondent Weymann signed the Uniform Submission Agreement: August 18, 2003.
Respondent MCG did not sign the Uniform Submission Agreement.

03-06094

Statement of Claim filed on or about: August 18, 2003.
Claimant Aidone signed the Uniform Submission Agreement: August 11, 2003.

Respondents did not file a Statement of Answer or sign Uniform Submission Agreements.

CASE SUMMARY

03-05469

Claimant asserted the following causes of action: breach of contract; violation of § 31-71a of Connecticut Wage Law; defamation; misappropriation and unjust enrichment; and Weymann's personal liability on all claims.

Unless specifically admitted in his Reply to Counterclaims, Claimant denied the allegations made in the Counterclaims.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim. In its Counterclaims, Respondent MCG asserted the following causes of action: breach of contract; breach of loyalty/fiduciary duty; and offset.

03-04660

Claimant asserted the following causes of action: breach of contract and failure to pay commissions.

Unless specifically admitted in his Reply to Counterclaims, Claimant denied the allegations made in the Counterclaims and asserted various affirmative defenses.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim. In its Counterclaims, Respondent MCG asserted the following causes of action: breach of contract; breach of duty of loyalty/fiduciary duty; computer violations; defamation/CUTPA/tortious interference; and offset.

03-06094

Claimant asserted the following causes of action: defamation; breach of contract; violation of the Connecticut Wage Protection Statutes, C.G.S. § 31-70, et seq.

RELIEF REQUESTED

03-05469

Claimant requested compensatory damages in the amount of \$1,199,059.00 on the First, Second, and Fourth Causes of Action; double damages in the amount of \$2,398,118.00, together with interest, attorneys' fees, and costs pursuant to the Connecticut Wage Law; compensatory damages in the amount of \$1,000,000.00 on the Third Cause of Action; punitive damages in the amount of \$1,000,000.00 on the Third Cause of Action; interest, forum fees, attorneys' fees, and costs on all causes of action; and such other and further relief as the Panel may deem just and proper.

In his Reply to Counterclaims, Claimant requested that the Panel enter an award dismissing Respondents' Counterclaims in their entirety.

In its Counterclaim, Respondent MCG requested compensatory damages, attorneys' fees, costs, and interest.

03-04660

Claimant requested unpaid wages in the amount of \$2,003,588.50; double damages in the amount of \$4,007,177.00; and attorneys' fees, costs, and interest in the amount of

\$1,000,000.00.

In its Counterclaim, Respondent MCG requested compensatory damages, attorneys' fees, costs and interest.

03-06094

Claimant requested compensatory damages broken down as follows:

a. Unpaid Vacation Pay (13 days)	\$2,137.00
b. Unpaid Wages (Commissions)	\$278,422.50
c. Double Damages	\$561,119.00
d. Attorneys' Fees, Costs, and Interest	\$500,000.00 (estimate)
e. Compensatory Damages for Defamation	\$1,000,000.00
f. Punitive Damages	\$1,000,000.00

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 25, 2003, Claimant Crikelair filed a motion to consolidate this matter with NASD Dispute Resolution ("NASD DR") Arbitration Nos. 03-05469 and 03-06094. On or about October 29, 2003, Respondent filed an opposition to the motion to consolidate the three arbitration cases. By letter dated December 19, 2003, NASD DR notified the parties that the Director of Arbitration considered the consolidation of these three cases and the Director determined to grant the request.

On or about January 13, 2004, the Claimant in 03-06094 withdrew his claims against Respondents; therefore, the arbitration of consolidated NASD DR Arbitration Nos. 03-05469 and 03-04660 proceeded.

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

1. Respondents are jointly and severally liable for and shall pay to Claimant Crikelair wages and statutory damages in the amount of \$4,570,590.38.
2. Respondents are jointly and severally liable for and shall pay to Claimant Crikelair pre-award interest in the amount of \$100,227.72.

3. Respondents are jointly and severally liable for and shall pay to Claimant Crikelair post-award interest at the rate of 10% per year until payment of the award.
4. Respondents are jointly and severally liable for and shall pay to Claimant Crikelair attorneys' fees and costs in the amount of \$250,000.00 pursuant to the Connecticut Wage Protection Statute.
5. Respondents are jointly and severally liable for and shall pay to Claimant Twomey wages and statutory damages in the amount of \$1,798,588.50.
6. Respondents are jointly and severally liable for and shall pay to Claimant Twomey pre-award interest in the amount of \$86,605.00.
7. Respondents are jointly and severally liable for and shall pay to Claimant Twomey post-award interest at the rate of 10% per year until payment of the award.
8. Respondents are jointly and severally liable for and shall pay to Claimant Twomey attorneys' fees and costs in the amount of \$250,000.00 pursuant to the Connecticut Wage Protection Statute.
9. Respondent MCG's counterclaims are hereby dismissed in their entirety.
10. Any and all relief not specifically addressed herein, including punitive damages, 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 (03-05469)	= \$ 600.00
Counterclaim filing fee (03-05469)	= \$ 500.00
Initial claim filing fee (03-04660)	= \$ 600.00
Counterclaim filing fee (03-04660)	= \$ 500.00
Initial claim filing fee (03-06094)	= \$ 500.00

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, Mallory Capital Group, LLC is a party.

Member surcharge (03-05469)	= \$ 3,350.00
Member surcharge (03-04660)	= \$ 3,350.00
Member surcharge (03-06094)	= \$ 2,800.00
Pre-hearing process fee (03-04660)	= \$ 750.00
Pre-hearing process fee (03-05469)	= \$ 750.00
Pre-hearing process fee (03-06094)	= \$ 750.00
Hearing process fee (03-05469)	= \$ 5,500.00

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:

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00 = \$ 1,350.00

Pre-hearing conferences:	March 19, 2004	1 session
	March 26, 2004	1 session
	May 18, 2004	1 session

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$ 1,200.00

Pre-hearing conference:	January 20, 2004	1 session
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Eleven (11) Hearing sessions @ \$1,200.00 = \$13,200.00

Hearing Dates:	May 24, 2004	2 sessions
	May 25, 2004	2 sessions
	May 26, 2004	2 sessions
	June 14, 2004	2 sessions
	June 28, 2004	2 sessions
	July 7, 2004	1 session

Total Forum Fees = \$15,750.00

1. The Panel has assessed \$2,625.00 of the forum fees against Claimant Crikelair.
2. The Panel has assessed \$2,625.00 of the forum fees against Claimant Twomey.
3. The Panel has assessed \$10,500.00 of the forum fees jointly and severally against Respondents.

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. Claimant Crikelair requested copies of hearing tapes = \$ 165.00

Fee Summary

1. Claimant Twomey is solely liable for:

Initial Filing Fee (03-05469)	= \$ 600.00
<u>Forum Fees</u>	= \$ 2,625.00
Total Fees	= \$ 3,225.00
<u>Less payments</u>	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 1,425.00

2. Claimant Crikelair is solely liable for:

Initial Filing Fee (03-04660)	= \$ 600.00
Administrative Fees	= \$ 165.00
<u>Forum Fees</u>	= \$ 2,625.00
Total Fees	= \$ 3,390.00
<u>Less payments</u>	= \$ 2,025.00
Balance Due NASD Dispute Resolution	= \$ 1,365.00

3. Claimant Aidone is solely liable for:

<u>Initial Filing Fee (03-06094)</u>	= \$ 500.00
Total Fees	= \$ 500.00
<u>Less payments</u>	= \$ 1,830.00
Refund Due Claimant Aidone	= \$ 1,330.00

4. Respondent MCG is solely liable for:

Counterclaim Filing Fee (03-05469)	= \$ 500.00
Counterclaim Filing Fee (03-04660)	= \$ 500.00
Member Fees (03-05469)	= \$ 9,600.00
Member Fees (03-04660)	= \$ 4,100.00
<u>Member Fees (03-06094)</u>	= \$ 3,550.00
Total Fees	= \$ 18,250.00
<u>Less payments</u>	= \$ 18,250.00
Balance Due NASD Dispute Resolution	= \$ 0.00

5. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 10,500.00
Total Fees	= \$ 10,500.00

<u>Less payments</u>	<u>= \$ 2,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 8,500.00

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

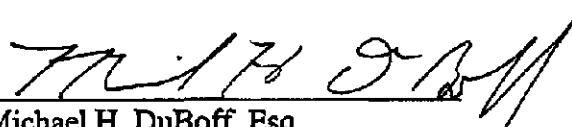
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ARBITRATION PANEL

Michael H. DuBoff, Esq. - Public Arbitrator, Presiding Chair
Simon S. Kogan, Esq. - Public Arbitrator
William E.S. Browning, 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.



Michael H. DuBoff, Esq.
Public Arbitrator, Presiding Chairperson



Signature Date

Simon S. Kogan, Esq.
Public Arbitrator

Signature Date

William E.S. Browning, Esq.
Non-Public Arbitrator

Signature Date

September 20, 2004
Date of Service (For NASD Dispute Resolution use only)

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ARBITRATION PANEL

Michael H. DuBoff, Esq. - Public Arbitrator, Presiding Chair
Simon S. Kogan, Esq. - Public Arbitrator
William E.S. Browning, 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.

Michael H. DuBoff, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Simon S. Kogan, Esq.
Public Arbitrator

Signature Date



William E.S. Browning, Esq.
Non-Public Arbitrator



Signature Date

September 20, 2004
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Michael H. DuBoff, Esq.	-	Public Arbitrator, Presiding Chair
Simon S. Kogan, Esq.	-	Public Arbitrator
William E.S. Browning, Esq.	-	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.

Michael H. DuBoff, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Simon S. Kogan, Esq.
Public Arbitrator

9/21/04
Signature Date

William E.S. Browning, Esq.
Non-Public Arbitrator

Signature Date

September 20, 2004
Date of Service (For NASD Dispute Resolution use only)