

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

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In the Matter of the Arbitration Between:

Westrock Advisors, Inc. (Claimant) v. Mitchell Toland (Respondent)

Case Number: 03-05565

Hearing Site: New York, New York

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Nature of the Dispute: Member v. Associated Person.

**REPRESENTATION OF PARTIES**

Claimant Westrock Advisors, Inc. ("Westrock") hereinafter referred to as "Claimant":  
Robert A. Giacovas, Esq., Lazare Potter Giacovas & Kranjac, LLP, New York, NY.

Respondent Mitchell Toland ("Toland") hereinafter referred to as "Respondent": Brad S.  
Maistrow, Esq., Snow Becker Krauss, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: July 29, 2003.

Claimant signed the Uniform Submission Agreement: July 18, 2003.

Statement of Answer filed by Respondent on or about: October 21, 2003.

Respondent signed the Uniform Submission Agreement: October 21, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of promissory note; and  
commercial defamation.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$33,307.41, consisting of  
the principal amount due under the Note; damages in an amount to be determined, on  
account of Respondent's defamation; punitive damages; costs and disbursements,  
including reasonable attorneys' fees; pre- and post-award interest; and such other and  
further relief as the Arbitrator may deem just and proper.

Respondent requested that Claimant's Statement of Claim be dismissed in its entirety;

costs, disbursements, and attorneys' fees; and a referral to NASDR District 10 Enforcement.

**OTHER ISSUES CONSIDERED AND DECIDED**

During the hearing on November 8, 2004, a witness for Respondent failed to appear. The Arbitrator allowed Respondent additional time to obtain the appearance of the witness for additional testimony. After several attempts, Respondent was unable to procure the witness, and the Arbitrator determined to close the record and rule on the case after the conference on December 16, 2004.

**AWARD**

After considering the pleadings, and the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of \$29,300.00 plus interest at the rate of 9% from June 3, 2003, to the date of the award.
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 |
|--------------------------|--------------|

**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, Westrock Advisors, Inc. is a party.

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

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

|   |          |
|---|----------|
| July 27-29, 2004, adjournment by Respondent | = Waived |
|---|----------|

**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, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) Pre-hearing sessions with the sole arbitrator @ \$450.00 = \$1,800.00

Pre-hearing conferences: May 3, 2004 1 session  
July 23, 2004 1 session  
September 21, 2004 1 session  
December 16, 2004 1 session

Five (5) Hearing sessions @ \$450.00 = \$2,250.00

Hearing Dates: October 6, 2004 2 sessions  
October 7, 2004 2 sessions  
November 8, 2004 1 session

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Total Forum Fees = \$4,050.00

The Arbitrator has assessed \$1,800.00 of the forum fees against Claimant.

The Arbitrator has assessed \$2,250.00 of the forum fees against Respondent.

**Fee Summary**

1. Claimant is solely liable for:

|                                     |                     |
|-------------------------------------|---------------------|
| Initial Filing Fee                  | = \$1,000.00        |
| Member Fees                         | = \$2,625.00        |
| <u>Forum Fees</u>                   | <u>= \$1,800.00</u> |
| Total Fees                          | = \$5,425.00        |
| <u>Less payments</u>                | <u>= \$4,225.00</u> |
| Balance Due NASD Dispute Resolution | = \$1,200.00        |

2. Respondent is solely liable for:

|                                     |                     |
|-------------------------------------|---------------------|
| <u>Forum Fees</u>                   | <u>= \$2,250.00</u> |
| Total Fees                          | = \$2,250.00        |
| <u>Less payments</u>                | <u>= \$ 0.00</u>    |
| Balance Due NASD Dispute Resolution | = \$2,250.00        |

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| 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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**ARBITRATOR**

Margaret McQueeney

Sole Public Arbitrator

**Arbitrator's Signature**

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.



Margaret McQueeney  
Sole Public Arbitrator

1/05/05

Signature Date

January 6, 2005

Date of Service (For NASD Dispute Resolution use only)