

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Howard Rosencrans (Claimant) v. HD Brous & Co., Inc., Howard Brous, and Robert Brous (Respondents)

Case Number: 03-05886

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Howard Rosencrans ("Rosencrans") hereinafter referred to as "Claimant": Steven Altman, Esq., Altman & Company, P.C., New York, NY. Previously represented by: Donald L. Rosenthal, Esq., Scarola Reavis & Parent, New York, NY.

Respondents HD Brous & Co., Inc. ("HD Brous"), Howard Brous ("H. Brous"), and Robert Brous ("R. Brous") hereinafter collectively referred to as "Respondents": Robert P. Stein, Esq., Greenberg Traurig, P.A., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: August 12, 2003.

Reply to Counterclaims filed by Claimant on or about: November 21, 2003.

Claimant signed the Uniform Submission Agreement: July 22, 2003.

Joint Statement of Answer and Counterclaim filed by Respondents on or about: October 31, 2003.

Respondent HD Brous signed the Uniform Submission Agreement: October 23, 2003.

Respondent H. Brous signed the Uniform Submission Agreement: October 23, 2003.

Respondent R. Brous signed the Uniform Submission Agreement: October 23, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of obligation to pay severance; defamation; and breach of contract.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In the Counterclaim, Respondent H.D. Brous asserted the following causes of action: that the Employment Agreement terminated

and is of no force or effect; that Claimant is indebted to the firm for legal fees; and failure to reimburse for the Bigdough.com license fee.

RELIEF REQUESTED

Claimant requested severance benefits equal to three years' salary, or \$1,245,000.00; compensatory damages in the amount of \$2,400,000.00; punitive damages in the amount of \$1,500,000.00; compensatory damages in the amount of \$75,000.00; a direction that Respondent HD Brous pay all accruing commissions on the accounts for which Claimant acted as broker; and such other and further relief as the Panel deems just and proper.

In the Answer and Counterclaim, Respondents requested that Claimant's claim be dismissed in its entirety; a declaration that the Employment Agreement terminated as of March 27, 2003 and is of no further force or effect; compensatory damages in the amount of \$23,217.49; compensatory damages in the amount of \$10,825.00; and such other and further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

At the conclusion of the presentation of all of the evidence by both parties, counsel for the Respondents made an application to dismiss Claimant's second claim for relief based on "defamation". After argument was heard and after due deliberation, the Panel determined to grant the motion to dismiss the defamation claim.

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. Respondent HD Brous is solely liable for and shall pay to Claimant compensatory damages in the amount of \$1,043,499.71, plus pre-award interest at the rate of 9% from February 14, 2003 through February 14, 2005, or \$187,821.70. The award of compensatory damages is broken down as follows:

First Cause of Action (Severance)	-	\$1,024,387.71
(3 x \$341,462.57 per annum)		
Second Cause of Action (Defamation)	-	Dismissed
Third Cause of Action (Breach of Contract)	-	\$ 19,112.00
Total		\$1,043,499.71

2. Respondent HD Brous is solely liable for and shall pay to Claimant post-award interest at the rate of 9% per annum from February 15, 2005 through the date of payment of the award.

3. Respondent HD Brous is solely liable for and shall pay to Claimant the sum of \$600.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.
4. Respondents' Counterclaims are denied in their entirety.
5. 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	= \$ 600.00
Counterclaim 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 persons at the time of the events giving rise to the dispute. Accordingly, HD Brous & Co., Inc. is a party.

Member surcharge	= \$3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

November 9, 2004, adjournment by R.Brous	= Waived
--	----------

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

November 9, 2004, adjournment by R.Brous	= 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:

Five (5) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 2,250.00
Pre-hearing conferences:	
June 16, 2004	1 session
July 22, 2004	1 session
July 28, 2004	1 session
August 2, 2004	1 session
August 4, 2004	1 session

Three (3) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 3,600.00

Pre-hearing conferences: June 11, 2004 1 session
July 2, 2004 1 session
November 9, 2004 1 session

Twenty-two (22) Hearing sessions @ \$1,200.00 = \$26,400.00

Hearing Dates: September 27, 2004 2 sessions
September 30, 2004 2 sessions
October 19, 2004 2 sessions
October 20, 2004 2 sessions
October 21, 2004 2 sessions
January 6, 2005 2 sessions
January 12, 2005 2 sessions
January 13, 2005 2 sessions
January 14, 2005 2 sessions
January 31, 2005 2 sessions
February 2, 2005 2 sessions

Total Forum Fees = \$32,250.00

1. The Panel has assessed the forum fees of \$32,250.00 jointly and severally against Respondents.

Fee Summary

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 600.00
<u>Less payments</u>	= \$ 1,800.00
<u>Refund Due to Claimant</u>	= \$ 1,200.00

As stated in the "Award" section above, Respondent HD Brous is solely liable and shall reimburse Claimant for the \$600.00 filing fee.

2. Respondent HD Brous is solely liable for:

<u>Counterclaim Filing Fee</u>	= \$ 1,000.00
<u>Member Fees</u>	= \$ 9,600.00
<u>Total Fees</u>	= \$10,600.00
<u>Less payments</u>	= \$10,375.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 225.00

3. Respondents are jointly and severally liable for:

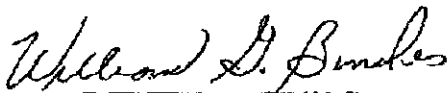
<u>Forum Fees</u>	= \$32,250.00
<u>Total Fees</u>	= \$32,250.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$32,250.00

ARBITRATION PANEL

William G. Binckes, Esq.	-	Public Arbitrator, Presiding Chairperson
Alvin Green, Esq.	-	Public Arbitrator
Michael F. Greco	-	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 which is my award.



William G. Binckes, Esq.
Public Arbitrator, Presiding Chairperson

2/15/05
Signature Date

Alvin Green, Esq.
Public Arbitrator

Signature Date

Michael F. Greco
Non-Public Arbitrator

Signature Date

February 16, 2005

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

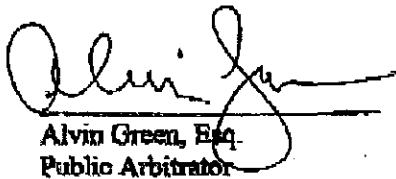
William G. Binckes, Esq.	-	Public Arbitrator, Presiding Chairperson
Alvin Green, Esq.	-	Public Arbitrator
Michael F. Greco	-	Non-Public Arbitrator

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 which is my award.

William G. Binckes, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Alvin Green, Esq.
Public Arbitrator

2/15/2005

Signature Date

Michael F. Greco
Non-Public Arbitrator

Signature Date

February 16, 2005

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

William G. Binckes, Esq.	-	Public Arbitrator, Presiding Chairperson
Alvin Green, Esq.	-	Public Arbitrator
Michael F. Greco	-	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 which is my award.

William G. Binckes, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Alvin Green, Esq.
Public Arbitrator

Signature Date



Michael F. Greco
Non-Public Arbitrator



Signature Date

February 16, 2005

Date of Service (For NASD Dispute Resolution use only)