

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Heritage Income Partners, LP, Claimant v. Imperial Capital, LLC, Respondent

Case Number: 03-05942

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

Jerry D. Smith
Heritage Income Partners, LP
Irvine, California

For Respondent:

Timothy N. Will, Esq.
Albert & Will, LLP
Torrance, California

CASE INFORMATION

Statement of Claim filed: August 13, 2003

Claimant's Uniform Submission Agreement signed: August 13, 2003

Statement of Answer filed by Respondent: October 27, 2003

CASE SUMMARY

Claimant alleged negligence. Claimant's allegations involved Respondent's failure to transfer a Compania Siderurgica bond from Claimant's account at Imperial Capital, LLC to Claimant's account at Banc of America Securities LLC.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested \$28,565.00 in compensatory damages, \$7,765.62 in accrued interest, and a refund of arbitration filing and hearing costs.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

On September 17, 2003, Claimant signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

The parties agreed that a handwritten, signed Award may be entered.

AWARD

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

- 1) Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 175.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Imperial Capital, LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 875.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 1,000.00
Total Member Fees	= \$ 2,625.00

Forum Fees and Assessments

The Arbitrator assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Arbitrator. The following fees are assessed:

1 Pre-hearing conference session with the Arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: February 2, 2004 1 session	
1 Hearing session @ \$450.00/session	= \$ 450.00
Hearing: July 27, 2004 1 session	
Total Forum Fees	= \$ 900.00

The Arbitrator assessed \$ 900.00 of the forum fees to Claimant.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$ 900.00
Total Fees	= \$ 1,075.00
Less payments	= \$(625.00)
Balance Due NASD Dispute Resolution	= \$ 450.00

2. Respondent is charged with the following fees and costs:

Member Fees	= \$ 2,625.00
Less payments	= \$(3,375.00)
Refund Due Respondent	= \$(750.00)

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

ARBITRATOR

Benjamin F. Breslauer

- Public Arbitrator, Presiding Chair

Arbitrator's Signature

Benjamin F. Breslauer
Chair, Public Arbitrator

Signature Date

7/28/04
Date of Service

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ARBITRATOR

Benjamin F. Breslauer

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Public Arbitrator, Presiding Chair

Arbitrator's Signature



Benjamin F. Breslauer
Chair, Public Arbitrator

7/28/04

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