

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

Steven R. Peabody, Claimant v. Lance J. Johnson, Respondent

Lance J. Johnson, Counter-Claimant v. Steven R. Peabody, Counter-Respondent

Case Number: 03-05995

Hearing Site: Portland, Oregon

Nature of Dispute: Associated Person v. Associated Person

REPRESENTATION OF PARTIES

For Claimant/Counter-Respondent:

Steven R. Peabody
In Pro Se
Springfield, Oregon

For Respondent/Counter-Claimant:

Lance Johnson
In Pro Se
Portland, Oregon

CASE INFORMATION

Statement of Claim filed: August 9, 2003

Supplement to Statement of Claim filed: October 28, 2003

Claimant/Counter-Respondent's Uniform Submission Agreement signed: September 3, 2003

Statement of Answer and Counterclaim filed by Respondent/Counter-Claimant:
November 7, 2003

Respondent/Counter-Claimant's Uniform Submission Agreement signed: October 30, 2003

CASE SUMMARY

In his Statement of Claim and in his Supplemental Statement of Claim, Claimant/Counter-Respondent alleged breach of contract involving the sale of Claimant's practice at American Express Advisors Inc. to Respondent.

Respondent/Counter-Claimant denied the allegations of wrongdoing as set forth in the Claimant/Counter-Respondent's Statement of Claim and Supplemental Statement of Claim. In his Counter-Claim, Respondent/Counter-Claimant alleged breach of the non-compete clause, breach of contract, and slander.

RELIEF REQUESTED

Claimant/Counter-Respondent requested compensatory damages in the sum of \$77,300.00, punitive damages in the sum of \$20,000.00, and costs, including attorney's fees.

Respondent/Counter-Claimant requested dismissal of the Claimant's Statement of Claim and Supplemental Statement of Claim in their entirety.

In his Counterclaim, Respondent/Counter-Claimant requested compensatory damages in the sum of \$51,250.00.

OTHER ISSUES CONSIDERED AND DECIDED

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent/Counter-Claimant is liable to and shall pay Claimant/Counter-Respondent compensatory damages in the sum of \$51,000.00.
- 2) Claimant/Counter-Respondent's claim for punitive damages is denied.
- 3) Respondent/Counter-Claimant's Counterclaim is dismissed in its entirety.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) 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	= \$ 225.00
Respondent's Counterclaim filing fee	= \$ 225.00

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 American Express Financial Advisors, Inc. was the employer of Respondent Lance Johnson at the time of the events giving rise to this dispute and the following fees are assessed:

Member Surcharge	= \$1,100.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$1,700.00
Total Member Fees	= \$ 3,550.00

Forum Fees and Assessments

The Panel 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 Panel/Chair. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$ 750.00/session	= \$ 750.00
Pre-hearing conference: January 16, 2004 1 session	
(2) Hearing sessions @ \$750.00/session	= \$1,500.00
Hearing: April 30, 2004 2 sessions	
Total Forum Fees	= \$ 2,250.00

The Panel assessed \$2,250.00 of the forum fees to Respondent/Counter-Claimant.

Fee Summary

1. Claimant/Counter-Respondent Steven R. Peabody is charged with the following fees and costs:

Initial Filing Fee	= \$ 225.00
<u>Less payments</u>	= \$(975.00)
Refund Due Claimant/Counter-Respondent	= \$ (750.00)

2. Respondent/Counter-Claimant Lance J. Johnson is charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$2,250.00
Balance Due NASD Dispute Resolution	= \$2,475.00

3. Member Firm, American Express Advisors, Inc., is charged with the following fees and costs:

Member Fees	= \$ 3,550.00
<u>Less payments</u>	= \$(5,400.00)
Refund Due	= \$(1,850.00)

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.

NASD Dispute Resolution
Arbitration No: 03-05905
Award Page 5 of 5

ARBITRATION PANEL

Gerald D. Wygant, Esq.	-	Public Arbitrator Presiding Chair
Nancy E. Hochman, Esq.	-	Public Arbitrator
Daniel Dunnington	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Gerald D. Wygant, Esq.
Chair, Public Arbitrator

Signature Date



Nancy E. Hochman, Esq.
Public Arbitrator

5/6/04

Signature Date

Daniel Dunnington
Non-Public Arbitrator

Signature Date

MAY 7, 2004

Date of Service

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Daniel Dunnington	-	Non-Public Arbitrator

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Chair, Public Arbitrator

Signature Date

Nancy E. Hochman, Esq.
Public Arbitrator

Signature Date

Daniel Dunnington
Daniel Dunnington
Non-Public Arbitrator

5-6-04
Signature Date


MAY 7, 2004
Date of Service

NASD Dispute Resolution
Arbitration No: 03-05995
Award Page 5 of 5

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Daniel Dunnington	Non-Public Arbitrator

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Chair, Public Arbitrator

5-6-2004
Signature Date

Nancy E. Hochman, Esq.
Public Arbitrator

Signature Date

Daniel Dunnington
Non-Public Arbitrator

Signature Date

MAY 7, 2004
Date of Service