

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Steve Kay (Claimant) v. Butler Wick & Co., Inc. (Respondent)

Case Number: 03-06363

Hearing Site: Cleveland, Ohio

Nature of the Dispute: Associated Person v. Member.

REPRESENTATION OF PARTIES

Claimant Steve Kay ("Kay") hereinafter referred to as "Claimant": James A. DeRoche, Esq., Garson & Associates Co., L.P.A., Cleveland, OH.

Respondent Butler Wick & Co., Inc. ("Butler") hereinafter referred to as "Respondent": Daniel P. O'Meara, Esq., Mongtomery, McCracken, Walker & Rhoads, LLP, Philadelphia, PA.

CASE INFORMATION

Statement of Claim filed on or about: August 27, 2003.

Reply to Counterclaim filed on or about: November 24, 2003.

Claimant signed the Uniform Submission Agreement: August 26, 2003.

Statement of Answer and Counterclaims filed by Respondent on or about: October 30, 2003.

Respondent signed the Uniform Submission Agreement: October 30, 2003.

CASE SUMMARY

Claimant asserted the following cause of action: defamatory statements made on his Form U-5. Unless specifically admitted in his Reply to the Counterclaim, Claimant denied the allegations made in the Counterclaim.

Unless specifically admitted in its Answer and Counterclaims, Respondent denied the allegations made in the Statement of Claim. In its Counterclaim, Respondent asserted the following causes of action: breach of employee duty of loyalty, breach of employee duty of due care, negligence, and fraudulent misrepresentation.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$350,000.00, plus punitive

damages attorneys' fees, costs, and such other and further relief as the Panel finds just. In its Reply to the Counterclaim, Claimant requested an award dismissing the Counterclaim, assessing all forum fees against Respondent, and such other and further relief as the Panel finds just.

In its Counterclaim, Respondent requested compensatory damages in the amount of \$175,000.00

OTHER ISSUES CONSIDERED AND DECIDED

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 is liable for and shall pay to Claimant compensatory damages in the amount of \$55,555.00, plus interest at the rate of 4% per annum from August 15, 2002 through the date of payment of the Award.
2. The Counterclaims of Respondent are denied in their entirety.
3. 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	= \$ 300.00
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 person at the time of the events giving rise to the dispute. Accordingly, Butler, Wick & Co., Inc. is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00

Hearing process fee = \$2,750.00

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:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 = \$ 2,250.00

Pre-hearing conferences: February 2, 2004 1 session
May 11, 2004 1 session

Nine (9) Hearing sessions @ \$1,125.00 = \$10,125.00

Hearing Dates: June 16, 2004 2 sessions
June 17, 2004 2 sessions
June 18, 2004 3 sessions
July 6, 2004 2 sessions

Total Forum Fees = \$12,375.00

1. The Panel has assessed \$12,375.00 of the forum fees against Respondent.

Fee Summary

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$1,425.00
<u>Refund Due Claimant</u>	= \$1,125.00

2. Respondent is solely liable for:

<u>Counterclaim Filing Fee</u>	= \$ 1,000.00
<u>Member Fees</u>	= \$ 5,200.00
<u>Forum Fees</u>	= \$12,375.00
<u>Total Fees</u>	= \$18,575.00
<u>Less payments</u>	= \$ 7,325.00
<u>Balance Due NASD Dispute Resolution</u>	= \$11,250.00

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

ARBITRATION PANEL

Edward F. Siegel, Esq.	-	Public Arbitrator, Presiding Chairperson
Frank C. Fogl, Esq.	-	Public Arbitrator
Ronald Edward Heakins	-	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.

Edward F. Siegel, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Frank C. Fogl, Esq.
Public Arbitrator

Signature Date

Ronald Edward Heakins
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

FROM :

08/16/2004 08:57 FAX

FAX NO. :
NASD REGULATION

Aug. 16 2004 11:25AM P2
0008/008

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ARBITRATION PANEL

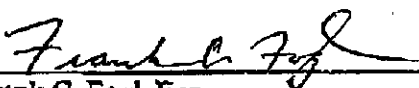
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Signature Date



Frank C. Fogl, Esq.
Public Arbitrator

8/16/04

Signature Date

Ronald Edward Heakins
Non-Public Arbitrator

Signature Date

AUGUST 18, 2004

Date of Service (For NASD Dispute Resolution use only)

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8/17/04

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Signature Date

Frank C. Fogl, Esq.
Public Arbitrator

Signature Date



Ronald Edward Heakins
Non-Public Arbitrator

8-16-2004

Signature Date

AUGUST 18, 2004

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