
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Investacorp, Inc.

Case Number: 03-06590

Names of the Respondents
FSC Securities Corporation
Anthony Nettuno
Christopher Nettuno
J. Kenneth Nettuno

Name of the Third Party Respondent
Scott Henry Sherwood

Name of the Counterclaimant
Nettuno & Associates, Inc. d/b/a
Nettworth

Hearing Site: Atlanta, Georgia

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

REPRESENTATION OF PARTIES

For Investacorp, Inc., hereinafter referred to as "Claimant": Alex J. Sabo, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

For Respondent FSC Securities Corporation ("FSC"): Robert G. Brunton, Esq., Kutak Rock, LLP, Atlanta, Georgia until his substitution as counsel on or about December 21, 2004. Thereafter, Michael K. Wolensky, Esq. and Ethan Cohen, Esq., Schiff and Hardin, LLP, Atlanta, Georgia appeared for Respondent FSC.

For Respondents Anthony Nettuno ("A. Nettuno"), Christopher Nettuno ("C. Nettuno") and J. Kenneth Nettuno ("K. Nettuno"): Eric S. Chofnas, Esq., Eric S. Chofnas, P.C., Alpharetta, Georgia and Victor L. Hayslip, Esq., Burr and Forman, LLP, Birmingham, Alabama until June 21, 2004. Thereafter, Victor L. Hayslip, Esq. and Alan O. Deeth, Esq., Burr and Forman, LLP, Birmingham, Alabama appeared for Respondents A. Nettuno, C. Nettuno and K. Nettuno.

For Scott Henry Sherwood, hereinafter referred to as "Third-Party Respondent": Alex J. Sabo, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

For Nettuno & Associates, Inc. d/b/a Nettworth, hereinafter referred to as "Counterclaimant": Eric S. Chofnas, Esq., Eric S. Chofnas, P.C., Alpharetta, Georgia and Victor L. Hayslip, Esq., Burr and Forman, LLP, Birmingham, Alabama until June 21, 2004. Thereafter, Victor L. Hayslip, Esq. and Alan O. Deeth, Esq., Burr and Forman, LLP, Birmingham, Alabama appeared for Counterclaimant.

CASE INFORMATION

Statement of Claim filed on or about: September 8, 2003.

Claimant signed the Uniform Submission Agreement: September 8, 2003.

Respondent FSC signed the Uniform Submission Agreement: October 14, 2003.

Respondents A. Nettuno, C. Nettuno and K. Nettuno signed the Uniform Submission Agreements: November 18, 2003.

Counterclaimant signed the Uniform Submission Agreement: November 18, 2003.

Statement of Answer filed by Respondent FSC on or about: November 24, 2003.

Motion to Intervene as Counterclaimant filed by Counterclaimant: on or about November 24, 2003.

Statement of Answer and Counterclaim against Claimant and Third Party Respondent filed by Respondents A. Nettuno, C. Nettuno, K. Nettuno and Counterclaimant on or about: November 24, 2003.

Reply in Support of its Statement of Claim Against Respondent FSC filed by Claimant on or about: January 23, 2004.

Response to Counterclaim jointly filed by Claimant and Third Party Respondent on or about: January 23, 2005.

Third Party Respondent did not file an executed Uniform Submission Agreement.

CASE SUMMARY

With respect to Respondents A. Nettuno, C. Nettuno and K. Nettuno, Claimant asserted a claim for breach of contract. With respect to Respondent FSC, Claimant asserted a claim for tortious interference with an advantageous business relationship. The causes of action relate to Respondents A. Nettuno, C. Nettuno and K. Nettuno's former employment as independent contractors registered with Claimant and their executed Manager Agreements dated December 8, 1995, December 12, 1995 and December 8, 1995, the Compensation Addendum dated May 8, 2000 and the Extension of Compensation Addendum dated October 28, 2002.

Unless specifically admitted in their Answer, Respondents A. Nettuno, C. Nettuno and K. Nettuno denied the allegations made in the Statement of Claim and asserted various defenses. Furthermore, in their Counterclaim, Respondents A. Nettuno, C. Nettuno, K. Nettuno and Counterclaimant asserted various causes of action. As to Claimant specifically, Respondents A. Nettuno, C. Nettuno, K. Nettuno and Counterclaimant asserted the following causes of action: breach of contract; tortious interference with contracts and contractual relations; defamation; misappropriation of trade secrets; and, fraud/misrepresentation. As to Third Party Respondent, Respondents A. Nettuno, C. Nettuno, K. Nettuno and Counterclaimant asserted the following causes of action: tortious interference with contracts and contractual relations; defamation; misappropriation of trade secrets; and, fraud/misrepresentation.

Unless specifically admitted in its Answer, Respondent FSC denied the allegations made in the Statement of Claim and asserted various defenses.

Unless specifically admitted in their Response, Claimant and Third-Party Respondent denied the allegations made in the Counterclaim and asserted various defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$6,000,000.00 jointly and severally against all Respondents, plus pre-award interest, the assessment of all forum fees and costs against Respondents and such other and further relief as the arbitrators deem just and proper. Claimant also requested an unspecified amount of punitive damages against Respondent FSC. In addition, Claimant asserted that it intended to seek attorneys' fees, under the parties' agreement, from a court of competent jurisdiction. Further, Claimant and Third-Party Respondent requested that Respondents A. Nettuno, C. Nettuno and K. Nettuno's Counterclaim be denied in its entirety, with the assessment of all costs and forum fees against Respondents A. Nettuno, C. Nettuno and K. Nettuno.

Respondents A. Nettuno, C. Nettuno and K. Nettuno requested that the Panel dismiss Claimant's Statement of Claim and enter a declaratory award affirming that Respondents A. Nettuno, C. Nettuno and K. Nettuno did not breach the Managers' Agreements, as amended. In addition, as asserted in their Counterclaim against Claimant and Third Party Respondent, Respondents A. Nettuno, C. Nettuno, K. Nettuno and Counterclaimant requested an award of damages in an amount not less than \$750,000.00 comprising of outstanding commissions, an unspecified amount of compensatory and punitive damages, costs, including attorneys' fees, and such further relief as the Panel deemed just and equitable.

Respondent FSC requested that the Panel issue an award in its favor dismissing Claimant's claim against it in its entirety, for an award of attorney fees and costs and such other relief as the arbitrators deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Third Party Respondent did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code"), and having answered the Counterclaim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Counterclaimant is not a member of the NASD and did not execute a pre-dispute agreement to arbitrate. On or about November 24, 2003, Counterclaimant asserted a Motion to Intervene as Counterclaimant on the basis that at all times relevant to this proceeding, Respondents A. Nettuno, C. Nettuno and K. Nettuno acted as agents and representatives of Counterclaimant and that Claimant and Third Party Respondent understood that they were acting in such capacity. Claimant and Third Party Respondent did not file a response to this motion. During the evidentiary hearing on or about September 12, 2005, pursuant to the unanimous consent of all parties, the Panel granted Counterclaimant's Motion to Intervene as Counterclaimant in this matter. Accordingly, Counterclaimant, having executed a Uniform Submission Agreement,

having filed a motion to intervene and a Counterclaim, and having appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

At the conclusion of Claimant's testimony on or about September 13, 2005, Respondents A. Nettuno, C. Nettuno, K. Nettuno and Counterclaimant asserted an ore tenus motion to dismiss Claimant's claims. Respondent FSC also moved to dismiss Claimant's claims at this time. Claimant objected to both motions. The Panel denied both motions.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claim for breach of contract against Respondents A. Nettuno, C. Nettuno and K. Nettuno is denied in part and granted in part. Accordingly, Respondents A. Nettuno, C. Nettuno and K. Nettuno are jointly and severally liable, in part, on the claim for breach of contract and shall pay to Claimant compensatory damages in the amount of \$300,000.00.

Claimant's claim against Respondent FSC for tortious interference with contractual relationship is denied in its entirety.

Respondents A. Nettuno, C. Nettuno, K. Nettuno and Counterclaimant's counterclaim against Claimant for breach of contract and for tortious interference with contractual relationship is denied in part and granted in part. Accordingly, Claimant is liable, in part, on the claims for breach of contract and tortious interference with contractual relationship and shall pay to Respondents A. Nettuno, C. Nettuno, K. Nettuno and Counterclaimant, compensatory damages in the amount of \$257,000.00.

Respondents A. Nettuno, C. Nettuno, K. Nettuno's and Counterclaimant's claim against Third Party Respondent is denied in its entirety.

Respondents A. Nettuno, C. Nettuno, K. Nettuno's and Counterclaimant's counterclaim for defamation is denied.

Respondents A. Nettuno, C. Nettuno, K. Nettuno's and Counterclaimant's counterclaim for misappropriation of trade secrets is denied.

Respondents A. Nettuno, C. Nettuno, K. Nettuno's and Counterclaimant's counterclaim for fraud is denied.

Each party will be responsible for their own costs and attorney fees.

Any and all claims for relief not specifically addressed herein, including Claimant's, Respondents A. Nettuno, C. Nettuno, K. Nettuno and Counterclaimant's respective requests for punitive damages, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$2,500.00
Counterclaim filing fee	= \$ 375.00

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. In this matter, the member firms Investacorp, Inc., LLC and FSC Securities Corporation are parties.

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:

December 13- 21, 2004 postponement to mediate requested by all parties = \$1,200.00

The Panel assessed \$600.00 of the adjournment fee to Claimant.

The Panel assessed \$600.00 of the adjournment fee jointly and severally to Respondents A. Nettuno, C. Nettuno and K. Nettuno.

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:

No three-day cancellation fees were incurred in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

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 arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: September 6, 2005 1 session

One (1) Pre-hearing session with the Panel @ \$1,200.00/session = \$ 1,200.00
Pre-hearing conference: April 19, 2004 1 session

Twelve (12) Hearing sessions @ \$1,200.00/session = \$ 14,400.00
Hearing Dates: September 12, 2005 2 sessions
 September 13, 2005 3 sessions
 September 14, 2005 2 sessions
 September 15, 2005 3 sessions
 September 16, 2005 2 sessions

Total Forum Fees = \$ 16,050.00

The Panel has assessed \$8,025.00 of the forum fees to Claimant.

The Panel has assessed \$8,025.00 of the forum fees jointly and severally to Respondents A. Nettuno, C. Nettuno and K. Nettuno.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

No administrative costs were incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 2,500.00
Member Fees	= \$ 9,600.00
Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 8,025.00
Total Fees	= \$20,725.00
Less payments	= \$19,950.00
Balance Due NASD Dispute Resolution	= \$ 775.00

Respondent FSC is solely liable for:

<u>Member Fees</u>	= \$9,600.00
<u>Total Fees</u>	= \$9,600.00
<u>Less payments</u>	= \$9,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents A. Nettuno, C. Nettuno and K. Nettuno and Counterclaimant are jointly and severally liable for:

<u>Counterclaim Filing Fee</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$ 375.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents A. Nettuno, C. Nettuno and K. Nettuno are jointly and severally liable for:

<u>Forum Fees</u>	= \$8,025.00
<u>Adjournment Fee</u>	= \$ 600.00
<u>Total Fees</u>	= \$8,625.00
<u>Less payments</u>	= \$1,750.00
Balance Due NASD Dispute Resolution	= \$6,875.00

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

ARBITRATION PANEL

Eleanor A. Joseph, JD	-	Public Arbitrator, Presiding Chairperson
Marvin Kent Speigner, Jr.	-	Public Arbitrator
Sandra J. Bakalus	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

9/29/05

Eleanor A. Joseph, JD
Public Arbitrator, Presiding Chairperson

Signature Date

/s/

9/30/05

Marvin Kent Speigner, Jr.
Public Arbitrator

Signature Date

/s/

9/28/05

Sandra J. Bakalus
Non-Public Arbitrator

Signature Date

September 30, 2005

Date of Service (For NASD Dispute Resolution office use only)

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Eleanor A. Joseph, JD
Public Arbitrator, Presiding Chairperson

9/29/05

Signature Date

Marvin Kent Spoigner, Jr.
Public Arbitrator

Signature Date

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Non-Public Arbitrator

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Eleanor A. Joseph, JD
Public Arbitrator, Presiding Chairperson

Signature Date

Marvin Kent Speigner
Marvin Kent Speigner, Jr.
Public Arbitrator

9-30-2005
Signature Date

Sandra J. Bakalus
Non-Public Arbitrator

Signature Date

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Concurring Arbitrators' Signatures

Eleanor A. Joseph, JD
Public Arbitrator, Presiding Chairperson

Signature Date:

Marvin Kent Speigner, Jr.
Public Arbitrator

Signature Date

Sandra J. Bakallus
Sandra J. Bakallus
Non-Public Arbitrator

9/28/05
Signature Date

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