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**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Harry Francois

Case Number: 04-00056

Names of the Respondents  
Marion Bass  
Michael Costello

Hearing Site: Atlanta, Georgia

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

**REPRESENTATION OF PARTIES**

Harry Francois, hereinafter referred to as "Claimant", appeared pro se.

Respondent Marion Bass, hereinafter referred to as "Bass", did not appear.

For Respondent Michael Costello, hereinafter referred to as "Costello": Robert H. McKnight, Esq., Berman Fink Van Horn, P.C., Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: January 6, 2004.

Claimant signed the Uniform Submission Agreement: January 5, 2004.

Statement of Answer and Motion to Dismiss filed by Respondent Costello on or about: January 16, 2004.

Respondent Costello signed the Uniform Submission Agreement: January 16, 2004.

Respondent Bass did not file a Statement of Answer or executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the causes of action of breach of unwritten contract, libel and slander. The causes of action relate to Claimant's former employment by Marion Bass Securities Corporation and the Form U-5 filed in connection therewith.

Unless specifically admitted in his Answer, Respondent Costello denied the allegations made in the Statement of Claim, asserted various defenses and asserted a Motion to Dismiss the Statement of Claim on the following bases: he did not prepare or author Claimant's Form U-5 language; he was not an owner or executive officer of Marion Bass Securities Corporation; and, the Statement of Claim failed to state any facts that gave rise to any cause of action against him personally.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$2,500.00 and that his Form U-5

filed in connection with his former employment by Marion Bass Securities Corporation be amended.

Respondent Costello requested dismissal of Claimant's claims in their entirety and an award of attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On or about October 22, 2002, Marion Bass filed for bankruptcy protection pursuant to Chapter 7 of the United States Bankruptcy Code. As such, all proceedings with respect to this individual were stayed and the Arbitrator made no determinations with respect to Marion Bass.

On or about July 27, 2004, the Arbitrator issued an order stating that the evidentiary hearing in this matter was scheduled to be conducted on January 17-18, 2005. In addition, the order reflected that, during the initial pre-hearing conference on July 27, 2004, Claimant "objected to the hearing not being held in 2004. The Arbitrator pointed out that this was prompt as it is already almost August. Claimant hung up the phone and refused to rejoin when called by the operator."

On or about July 21, 2004, Respondent Costello served his Request for Information and for Production of Documents on Claimant. Thereafter, on or about October 12, 2004, Respondent Costello filed a Motion to Compel Claimant's response to the Request for Information and for Production of Documents. On or about October 15, 2004, the Arbitrator issued an order stating that Claimant's response to Respondent Costello's Motion to Compel was due on or before November 1, 2004. Claimant did not file a response to the Motion to Compel.

Thereafter, on or about November 8, 2004, the Arbitrator issued an order stating that "Claimant must respond to Respondent Costello's Motion to Compel on or before November 15, 2004. Failure to respond to this order and/or participate in the pre-hearing conference to be held on November 17, 2004 at 2:00 p.m. may result in the imposition of sanctions under Rule 10305 of the NASD Code of Arbitration Procedure (the "Code"). Claimant did not file a response to Respondent Costello's Motion to Compel and did not appear at the pre-hearing conference on November 17, 2004.

On November 17, 2004, the Arbitrator issued an order stating that "In light of Claimant's apparent decision not to participate in these proceedings, including hanging up during the pre-hearing conference call held on July 27, 2004, refusing to answer discovery served on July 21, 2004, disobedience of the order dated November 8, 2004 and failing to participate in the pre-hearing conference held on November 17, 2004, despite being warned of the possibility of dismissal for failure to do so, the Statement of Claim is hereby dismissed, with prejudice, under Rule 10305(b) of the Code."

### **AWARD**

After considering the pleadings, Respondent Costello's Motion to Compel and the record in this matter, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are dismissed, with prejudice.

Respondent Costello's request for attorney's fees is granted and Claimant shall pay to Respondent Costello attorney's fees in the amount of \$305.00.

Any and all claims for relief not specifically addressed herein are 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 = \$ 25.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed in this matter.

#### **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 Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator @ \$50.00 = \$ 100.00

Pre-hearing conferences: July 27, 2004 1 session

November 17, 2004 1 session

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Total Forum Fees = \$ 100.00

The Arbitrator has assessed the total forum fees of \$100.00 to Claimant.

**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	= \$ 25.00
<u>Forum Fees</u>	= \$ 100.00
Total Fees	= \$ 125.00
<u>Less payments</u>	= \$ 75.00
Balance Due NASD Dispute Resolution	= \$ 50.00

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

**ARBITRATOR**

Brian N. Smiley, Esq.

Public Arbitrator, Presiding Chairperson

**Arbitrator's Signature**

/s/

11/23/04

Brian N. Smiley, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

11/24/04

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

### **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	= \$ 25.00
Forum Fees	= \$ 100.00
Total Fees	= \$ 125.00
Less payments	= \$ 75.00
Balance Due NASD Dispute Resolution	= \$ 50.00


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

## ARBITRATOR

**Brian N. Smiley, Esq.**

**Public Arbitrator, Presiding Chairperson**

**Arbitrator's Signature**

  
Brian N. Smiley, Esq.  
Public Arbitrator, Presiding Chairperson

Nov. 23, 2004  
Signature Date

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