

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Joseph A. Witt, Jr.

and

Case Number: 04-00330

Hearing Site: Denver, Colorado

Names of Respondents

Bathgate Capital Partners, LLC,
Steven Bathgate and
Richard Tyson Huebner

NATURE OF DISPUTE

Associated Person v. Member Firm and Associate Persons

REPRESENTATION OF PARTIES

Joseph A. Witt, Jr. ("**Claimant**") was represented by Patrick D. Vellone, Allen & Vellone, PC, Denver Colorado. On or about February 22, 2004, Mr. Vellone filed a Notice of Withdrawal of Counsel for Claimant. On or about March 14, 2005, Claimant retained new counsel and filed an Entry of Appearance for James W. Hubbell, Esq., Kelly, Haglund, Farnsey & Kahn, LLC, Denver, Colorado. On or about October 15, 2004, Claimant filed a Motion for Leave to Amend the Statement of Claim and a Motion for Summary Adjudication. On or about October 18, 2004, Claimant filed a Response to the Motion to Dismiss.

Bathgate Capital Partners, LLC ("**Bathgate Capital**"), Steven Bathgate ("**Bathgate**") and Richard Tyson Huebner ("**Huebner**"), hereinafter collectively referred to as "**Respondents**," were represented by Donald Salcito, Esq., Perkins Coie, LLP, Denver, Colorado. On or about October 13, 2005, an Entry of Appearance was filed for Respondents' new counsel, Steven D. Plissley, Esq., Sherman & Howard, LLC, Denver, Colorado. On or about October 15, 2004, Respondents filed a Motion to Dismiss. On or about October 19, 2004, Respondents filed a Response to Claimant's Motion for Leave to Amend the Statement of Claim and a Response to Claimant's Motion for Summary Adjudication.

CASE INFORMATION

The Statement of Claim was filed on or about January 20, 2004. The Submission Agreement of Claimant, Joseph A. Witt, Jr., was signed on or about January 13, 2004. The Amended Statement of Claim was filed on or about October 27, 2004.

The Statement of Answer was filed jointly by Respondents, Bathgate Capital Partners, LLC, Steven Bathgate and Richard Tyson Huebner, on or about March 16, 2004. The Submission Agreement of Respondent, Bathgate Capital Partners, LLC, was signed on or about March 15, 2004. The Submission Agreement of Respondent, Steven Bathgate, was signed on or about March 15, 2004. The Submission Agreement of Respondent, Richard Tyson Huebner, was signed on or about March 15, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, breach of fiduciary duty, libel and slander. The causes of action related to the Claimant becoming a partner in the joint venture with Respondents. Claimant alleged that he and Respondents entered into a contract for sharing joint venture profits and expenses as follows: Bathgate Capital would get 30% share of the net engagement fees (both cash and warrants) and Claimant would retain the remaining 70% of the cash and warrants arising from corporate finance transactions closed through Bathgate Capital. However, on beginning in late 2002, Claimant alleged that Bathgate Capital began to move away from the original business model of the venture as a "boutique" corporate finance firm by rapidly expanding its retail side of the operation. Also that Bathgate Capital attempted to unilaterally modify the contract for sharing profits and expenses. Claimant alleged that no consideration was offered to him for these modifications and when he refused to accept the "forced" unilateral agreement, principals of Bathgate Capital made implied threats and disparaging comments to others about Claimant.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim failed to state a claim upon which relief can be granted; the alleged contract was void for lack of consideration; Claimant's claims are barred or limited by the doctrine of unclean hands; Claimant failed to mitigate his damages; Claimant's claims are barred or limited by the applicable statutes of limitation; and Claimant's claims are barred or limited by the doctrines of laches, waiver and/or estoppel.

In their Counterclaim, Respondents alleged that Claimant breached his duty of loyalty, tortiously interfered with prospective and existing business relations, and misappropriated trade secrets.

Claimant denied the allegations made in the Counterclaim and asserted affirmative defenses including the following: the Counterclaim failed to state a claim upon which relief

can be granted; Respondents' Counterclaims are barred by their own wrongful conduct and also barred by the doctrines of waiver, estoppel, laches and/or unclean hands; Respondents' damages, if any, are barred by their failure to mitigate any damages; and Respondents' Counterclaims are barred by the doctrines of privilege to engage in business competition.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$1,500,000.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In their Counterclaim, Respondents requested an award for unspecified compensatory damages, costs, attorneys' fees and pre- and post-arbitration interest.

OTHER ISSUES CONSIDERED & DECIDED

On or about May 28, 2004, the parties were in agreement to have the non-public arbitrator, Otto K. Hilbert, II, Esq., as the Chairperson for this case.

On or about October 27, 2004, the Panel issued an Order granting Claimant's Motion for Leave to Amend the Statement of Claim. Also, the Panel denied Claimant's Motion for Summary Adjudication and denied Respondents' Motion to Dismiss.

On April 17, 2006, prior to the start of the final hearing, Claimant dismissed with prejudice all of his claims against Respondent, Richard Tyson Huebner.

During the final hearing, Respondents acknowledged that \$19,250.00 has been unintentionally retained by them and that this amount is owed to Claimant.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

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

- 1.) Claimant's claims, each and all, are hereby dismissed with prejudice;
- 2.) The Counterclaim of Respondents is dismissed with prejudice;
- 3.) Pursuant to the representations made at the final hearing, Respondent, Bathgate Capital Partners, LLC, is liable and shall pay to Claimant, Joseph A. Witt, Jr., the sum of \$19,250.00 for monies that are accrued and payable to Claimant by Respondent, Bathgate Capital Partners, LLC;
- 4.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 5.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 500.00
Counterclaim filing fee	= \$ 500.00

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 firm is Bathgate Capital Partners, LLC.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

Adjournment Fees

Adjournments granted during these proceedings:

November 15-18, 2004, adjournment requested by Respondents	= \$ 1,200.00
May 3-6, 2005, adjournment requested by Claimant	= \$ 1,200.00
September 19-23, 2005, adjournment requested by Claimant (fee waived by the Panel)	= \$ 1,500.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

Six (6) Pre-hearing sessions with Panel x \$1,200.00	= \$ 7,200.00
Pre-hearing conferences:	
June 16, 2004	1 session
August 10, 2004	1 session
September 14, 2004	1 session
October 27, 2004	1 session
November 15, 2004	1 session
January 31, 2005	1 session
Nine (9) Hearing sessions x \$1,200.00	= \$ 10,800.00
Hearing Dates:	
April 17, 2006	2 sessions
April 18, 2006	2 sessions
April 19, 2006	2 sessions
April 20, 2006	2 sessions
April 21, 2006	1 session
Total Forum Fees	= \$ 18,000.00

The Arbitration Panel has assessed \$9,000.00 of the forum fees to Joseph A. Witt, Jr.

The Arbitration Panel has assessed \$9,000.00 of the forum fees jointly and severally to Bathgate Capital Partners, LLC and Steven Bathgate.

Fee Summary

Claimant, Joseph A. Witt, Jr., is liable for:

Initial Filing Fee	= \$ 500.00
Adjournment Fee	= \$ 1,200.00
<u>Forum Fees</u>	<u>= \$ 9,000.00</u>

Total Fees	= \$ 10,700.00
<u>Less payments</u>	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 9,000.00

Respondent, Bathgate Capital Partners, LLC, is liable for:

<u>Member Fees</u>	= \$ 8,550.00
Total Fees	= \$ 8,550.00
<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Bathgate Capital Partners, LLC and Steven Bathgate, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 9,000.00
Total Fees	= \$ 9,000.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 9,000.00

Respondents, Bathgate Capital Partners, LLC, Steven Bathgate and Richard Tyson Huebner, are jointly and severally liable for:

Counterclaim Filing Fee	= \$ 500.00
<u>Adjournment Fee</u>	= \$ 1,200.00
Total Fees	= \$ 1,700.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,700.00

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

ARBITRATION PANEL

Otto K. Hilbert, II, Esq. - Non-Public Arbitrator, Presiding Chair
James B. Eichberg - Public Arbitrator
Bruce W. Brady, CPA - Public Arbitrator

Concurring Arbitrators:

/s/ Otto K. Hilbert, II, Esq.
Otto K. Hilbert, II, Esq.
Non-Public Arbitrator, Presiding Chair

May 3, 2006
Signature Date

/s/ James B. Eichberg
James B. Eichberg
Public Arbitrator

April 28, 2006
Signature Date

/s/ Bruce W. Brady, CPA
Bruce W. Brady, CPA
Public Arbitrator


May 3, 2006
Signature Date

May 3, 2006
Date of Service (For NASD office use only)

ARBITRATION PANEL

Otto K. Hilbert, II, Esq. - Non-Public Arbitrator, Presiding Chair
James B. Eichberg - Public Arbitrator
Bruce W. Brady, CPA - Public Arbitrator

Concurring Arbitrators:



Otto K. Hilbert, II, Esq.
Non-Public Arbitrator, Presiding Chair

8/3/06

Signature Date

James B. Eichberg
Public Arbitrator

Signature Date

Bruce W. Brady, CPA
Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

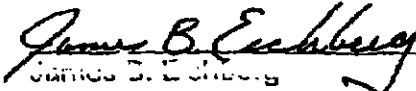
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Bruce W. Brady, CPA - Public Arbitrator

Concurring Arbitrators:

Otto K. Hilbert, II, Esq.
Non-Public Arbitrator, Presiding Chair

Signature Date


James B. Eichberg
Public Arbitrator

April 28, 2006
Signature Date

Bruce W. Brady, CPA
Public Arbitrator

Signature Date

David G. Givens (Public Arbitrator)

ARBITRATION PANEL

Otto K. Hilbert, II, Esq. - Non-Public Arbitrator, Presiding Chair
James B. Eichberg - Public Arbitrator
Bruce W. Brady, CPA - Public Arbitrator

Concurring Arbitrators:

Otto K. Hilbert, II, Esq.
Non-Public Arbitrator, Presiding Chair

Signature Date

James B. Eichberg
Public Arbitrator

Signature Date



Bruce W. Brady, CPA
Public Arbitrator

5/3/06

Signature Date

Date of Service (For NASD office use only)