

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

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In the Matter of the Arbitration Between:

Lawrence M. Polatchek (Claimant) v. Heights Partners, Inc., Richard A. Polatchek, and James Pappas (Respondents)

Case Number: 04-00358

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Lawrence M. Polatchek ("L. Polatchek") hereinafter referred to as "Claimant": Edward M. Spiro, Esq. and Andrew Schell, Esq., Morvillo, Abramowitz, Grand, Iason & Silberberg, P.C., New York, NY.

Respondents Heights Partners, Inc. ("Heights"), Richard A. Polatchek ("R. Polatchek"), and James Pappas ("J. Pappas") hereinafter collectively referred to as "Respondents": Paul T. Gentile, Esq., Gentile & Dickler, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: January 23, 2004.

Reply to Counterclaim filed on or about: March 26, 2004.

Claimant signed the Uniform Submission Agreement: January 21, 2004.

Joint Statement of Answer and Counterclaim filed by Respondents on or about: March 15, 2004.

Respondents signed the Uniform Submission Agreement: March 15, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: wrongful termination; breach of fiduciary duty; breach of contract; and breach of implied obligation of good faith and fair dealing. Unless specifically admitted in his Reply to Counterclaim, Claimant denied the allegations made in the Counterclaim.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Counterclaim, Heights asserted the following causes of action: that it should receive credit against the purchase price of

Claimant's share of stock in connection with his termination; direct transfer of Claimant's share of Heights to Heights.

### **RELIEF REQUESTED**

Claimant requested judgment against the Respondents as follows:

- (a) to be restored to his positions as a director, officer, and employee of Heights;
- (b) to receive all compensation lost as a result of his wrongful removal from these positions;
- (c) to receive all compensation owed for past services;
- (d) to continue to receive, as a holder of one-third of the shares of Heights, one-third of its profits;
- (e) to continue to receive the health and life insurance benefits that he received from Heights before his wrongful termination;
- (f) in the alternative, to receive the fair market value of his shares in Heights in accordance with Section 6.3 of the Shareholders Agreement;
- (g) to correct any erroneous filings with any governmental agency or self-regulatory organization concerning the circumstances of Claimant's purported termination from Heights;
- (h) in the alternative, in the event the Arbitration Panel concludes that Claimant was properly terminated for cause, to receive the correct Adjusted Capital Value for his shares of Heights;
- (i) punitive damages in the amount of \$10,000,000.00;
- (j) costs, disbursements, and attorneys' fees; and
- (k) such other and further relief as the Arbitration Panel may deem just and proper.

In his Reply to Counterclaim, Claimant requested that the Counterclaim of Heights be dismissed with prejudice and the relief sought by Claimant in his Statement of Claim be granted in its entirety.

Respondents requested judgment against Claimant as follows:

- 1. Direct the removal of Claimant by the Board of Directors of Heights from his position as officer, director, and employee of Heights.
- 2. Direct transfer of Claimant's share in Heights to Respondent Heights pursuant to payment by Heights to Claimant of Claimant's share of the Adjusted Capital Value as determined by CPA Joseph Sollazzo.
- 3. Attorneys' fees, costs, and disbursements.

### **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 Heights is liable for and shall pay to Claimant compensatory damages in the amount of \$932,828.00 in full payment for Claimant's shares in Heights Partners, Inc.
2. The Counterclaim of Respondent Heights is dismissed in its entirety except that Lawrence Polatchek's shareholder interest in Heights Partners, Inc., is terminated and any share certificates in his name may be irrevocably canceled on the books of the corporation.
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	= \$600.00
Heights' 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. Accordingly, Heights Partners, Inc. is a party.

Member surcharge	= \$3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,500.00

#### **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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: August 26, 2004 1 session	

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: June 14, 2004 1 session	

Fourteen (14) Hearing sessions @ \$1,200.00	= \$16,800.00
Hearing Dates: October 18, 2004 2 sessions	
October 19, 2004 2 sessions	
October 20, 2004 2 sessions	
October 21, 2004 2 sessions	
October 22, 2004 2 sessions	

October 26, 2004    2 sessions  
November 11, 2004    2 sessions

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Total Forum Fees = \$18,450.00

1. The Panel has assessed \$9,225.00 of the forum fees against Claimant.
2. The Panel has assessed \$9,225.00 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$9,225.00
Total Fees	= \$9,825.00
<u>Less payments</u>	= \$1,800.00
Balance Due NASD Dispute Resolution	= \$8,025.00
2. Respondent Heights is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$ 9,600.00
Total Fees	= \$10,100.00
<u>Less payments</u>	= \$ 9,600.00
Balance Due NASD Dispute Resolution	= \$ 500.00
3. Respondents are jointly and severally liable for:

Forum Fees	= \$ 9,225.00
Total Fees	= \$ 9,225.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 9,225.00

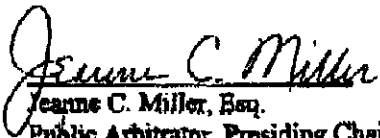
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Jeanne C. Miller, Esq.	-	Public Arbitrator, Presiding Chairperson
Paul E. Dahlman	-	Public Arbitrator
Garrett J. Dombrowski, Esq.	-	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 which is my award.

  
Jeanne C. Miller, Esq.  
Public Arbitrator, Presiding Chairperson

Nov. 27, 2004  
Signature Date

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Paul E. Dahlman  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Garrett J. Dombrowski, Esq.  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

December 1, 2004  
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Date of Service (For NASD Dispute Resolution use only)

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Jeanne C. Miller, Esq.	-	Public Arbitrator, Presiding Chairperson
Paul E. Dahlman	-	Public Arbitrator
Garrett J. Dombrowski, Esq.	-	Non-Public Arbitrator

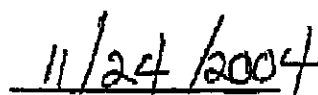
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Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Paul E. Dahlman  
Public Arbitrator

  
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Signature Date

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Garrett J. Dombrowski, Esq.  
Non-Public Arbitrator

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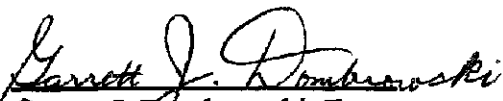
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Public Arbitrator, Presiding Chairperson

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Signature Date

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Paul E. Dahlman  
Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Garrett J. Dombrowski, Esq.  
Non-Public Arbitrator

November 26, 2004  
\_\_\_\_\_  
Signature Date

December 1, 2004

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)