

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

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In the Matter of the Arbitration Between:

James McCann (Claimant) v. HSBC Brokerage (USA) Inc. (Respondent)

Case Number: 04-01035

Hearing Site: New York, New York

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

Claimant, James McCann ("McCann") hereinafter referred to as "Claimant": Daniel W. DeLuca, Esq., Law Offices of Daniel W. DeLuca, Ronkonkoma, NY.

Respondent, HSBC Brokerage (USA) Inc. ("HSBC") hereinafter referred to as "Respondent": Scott D. Miller, Esq., HSBC Bank USA, Buffalo, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: February 12, 2004.

Claimant signed the Uniform Submission Agreement: March 4, 2004.

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

Statement of Answer and Counterclaim filed by Respondent on or about: May 14, 2004.

Respondent signed the Uniform Submission Agreement: April 1, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract, commissions, wrongful termination and compensation.

In its Counterclaim, Respondent asserted the following cause of action: negligence.

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

### **RELIEF REQUESTED**

In the Second Amended Statement of Claim, Claimant requested compensatory damages in the amount of \$65,727.76; attorneys' fees in a sum equal to 25% of the sums due; interest from October 6, 1999; costs and disbursements; and such other and further relief as may seem just and proper.

In its Counterclaim, Respondent requested: compensatory damages in the amount of \$90,000.00 attorneys' fees; and other costs.

Respondent requested that the Statement of Claim be dismissed with prejudice and be awarded an amount determined by the Panel along with costs disbursements and any other relief the Panel deems just and proper.

In his reply to Respondent's Counterclaim Claimant requested that the counterclaim be dismissed in its entirety, and grant an award as requested in his Statement of Claim together with costs, disbursements, 25% statutory attorneys' fees in addition to such other and further relief the Panel deems just and proper.

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

A telephonic pre-hearing conference call was held on October 4, 2004, Respondent withdrew its counterclaim and pursuant to Rule 10303 of the Code of Arbitration Procedure, both parties jointly requested an adjournment of the hearing dates and requested that the Panel decide the case on stipulated facts and documents without a hearing.

On or about March 29, 2005, Respondent's made a Motion to Dismiss. After due consideration, the Panel denied the motion.

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.

### **ARBITRATOR REPORT**

Claimant was a participant in the Marine Midland Investments Sales Commission Plan and its name changed to HSBC Brokerage (USA) Inc. "Respondent". Claimant was involuntarily discharged and at the time of discharge, the payout of any commissions under the Plan had not occurred. Continued employment was a condition for payment.

### **AWARD**

After considering the pleadings, the testimony and evidence submitted by the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety.
2. Any and all relief not specifically addressed herein, 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	= \$ 225.00
Counter claim	= \$ 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, HSBC is a party.

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,700.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

February 1-2, 2005 adjournment requested by Claimant	= \$ 375.00
February 1-2, 2005 adjournment requested by Respondent	= \$ 375.00

#### **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: January 20, 2005 1 session	
One (1) Pre-hearing session with Panel @ \$750.00	= \$ 750.00
Pre-hearing conference: October 4, 2004 1 session	
Total Forum Fees	= \$ 1,200.00

1. The Panel has assessed \$600.00 of the forum fees against Claimant.
2. The Panel has assessed \$600.00 of the forum fees against Respondent.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Adjournment Fee	= \$ 375.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 1,200.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 225.00

2. Respondent is solely liable for:

Filing Fee	= \$ 1,000.00
Member Fees	= \$ 3,550.00
Adjournment Fee	= \$ 375.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 5,525.00
Less payments	= \$ 5,050.00
Balance Due NASD Dispute Resolution	= \$ 475.00

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

**ARBITRATION PANEL**

Eugene D. McGahren	-	Public Arbitrator, Presiding Chairperson
Carl W. Klemme	-	Public Arbitrator
Alan S. Braunschweiger	-	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.

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Eugene D. McGahren  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Carl W. Klemme  
Public Arbitrator

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

Alan S. Braunschweiger ✓  
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Non-Public Arbitrator

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Signature Date


July 8, 2005  
Date of Service (For NASD Dispute Resolution use only)

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