

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Kevin T. McGuire (Claimant) v. HSBC Brokerage (USA) Inc. (Respondent)

Case Number: 04-01137

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member.

REPRESENTATION OF PARTIES

Claimant Kevin T. McGuire ("McGuire") hereinafter referred to as "Claimant" appeared *pro se*.

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 18, 2004.

Claimant signed the Uniform Submission Agreement: February 18, 2004.

Statement of Answer filed by Respondent on or about: April 14, 2004.

Respondent signed the Uniform Submission Agreement: June 14, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: unpaid commissions and compensation; and inaccurate information placed on Form U-5.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$6,000.00; compensatory damages in the amount of \$16,000.00; compensatory damages in the amount of \$40,000.00; and an amendment to his Form U-5.

Respondent requested that the claim be dismissed with prejudice, together with any other relief that the Panel finds just and proper.

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.

During the hearing, Claimant presented evidence which proved that his earnings at HSBC was between \$90,000.00 to \$100,000.00 per annum. The Panel believed that Claimant was entitled to 1 ½ years lost income, less the \$10,000.00 he received in unemployment benefits.

Pursuant to Rule 10203 of the NASD Code of Arbitration Procedure, a public panel should have been appointed to this case. The parties were notified and on October 20, 2004, confirmed their acceptance of the panel as currently constituted.

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 is liable for and shall pay to Claimant compensatory damages in the amount of \$140,000.00.
2. The Panel understands that HSBC Brokerage (USA) Inc. is unable to file an amended Form U-5 to change the termination comment filed as part of the reason for termination on Claimant's original Form U-5 to: "The reason for Kevin McGuire's termination is not accurate and should be disregarded. The termination was actually as a result of a misunderstanding regarding a trade approval". The firm is unable to submit the desired U-5 amendment as the Form U-5 prohibits a firm from amending any information other than residential address and disclosure information. Therefore, the Panel recommends that CRD expunge the reason for termination (i.e. "permitted to resign") as reported on Claimant's Form U-5 submitted by HSBC Brokerage (USA) Inc., and replace it with "voluntary". The Panel also recommends that CRD expunge the termination explanation/comment that states "failure to observe firm policy and procedure regarding a large trade approval". Replacement language for the termination comment is not provided as a "voluntary" termination does not require an explanation/termination comment. The expungement directive is made with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Claimant must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. 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

= \$300.00

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 Brokerage (USA) Inc. is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

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 Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: July 20, 2004 1 session	
Two (2) Hearing sessions @ \$1,125.00	= \$2,250.00
Hearing Date: October 12, 2004 2 sessions	
Total Forum Fees	= \$3,375.00

1. The Panel has assessed the forum fees totaling \$3,375.00 against the Respondent.

Fee Summary

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$ 975.00
Refund Due Claimant	= \$ 675.00

2. Respondent is solely liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	= \$3,375.00
Total Fees	= \$8,575.00
<u>Less payments</u>	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$5,025.00

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

ARBITRATION PANEL

Dennis M. Pape, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
John A. Astorina, Esq.	-	Non-Public Arbitrator
Norman B. Arnoff, 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 is which is my award.



Dennis M. Pape, Esq.
Non-Public Arbitrator, Presiding Chairperson

10/21/04
Signature Date

John A. Astorina, Esq.
Non-Public Arbitrator

Signature Date

Norman B. Arnoff, Esq.
Non-Public Arbitrator

Signature Date

October 22, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Dennis M. Pape, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
John A. Astorina, Esq.	-	Non-Public Arbitrator
Norman B. Arnoff, Esq.	-	Non-Public Arbitrator

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Dennis M. Pape, Esq.
Non-Public Arbitrator, Presiding Chairperson

Signature Date


John A. Astorina, Esq.
Non-Public Arbitrator

10/21/04
Signature Date

Norman B. Arnoff, Esq.
Non-Public Arbitrator

Signature Date

October 22, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Dennis M. Pape, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
John A. Astorina, Esq.	-	Non-Public Arbitrator
Norman B. Arnoff, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

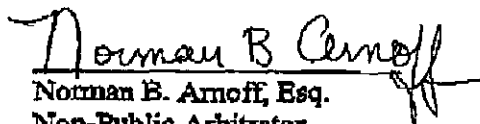
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Dennis M. Pape, Esq.
Non-Public Arbitrator, Presiding Chairperson

Signature Date

John A. Astorina, Esq.
Non-Public Arbitrator

Signature Date



Norman B. Arnoff, Esq.
Non-Public Arbitrator

10/21/04

Signature Date

October 24, 2004

Date of Service (For NASD Dispute Resolution use only)