

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Jennifer M. Hieber and William J. Holbrook (Claimants) v. Avalon Partners, Inc. and Vincent Au (Respondents)

Case Number: 04-01731

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimants Jennifer M. Hieber ("Hieber") and William J. Holbrook ("Holbrook") hereinafter collectively referred to as "Claimants": Michael H. DuBoff, Esq., Snow Becker Krauss, P.C., New York, NY. Previously represented by: Michael H. DuBoff, Esq., Davidoff & Malito, LLP, New York, NY.

Respondents Avalon Partners, Inc. ("Avalon") and Vincent Au ("Au") hereinafter collectively referred to as "Respondents": Sameer Rastogi, Esq., Sichenzia Ross Friedman Ference, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: March 8, 2004.
Amended Statement of Claim filed on or about: March 10, 2004.
Reply to Counterclaim filed by Claimants on or about: August 24, 2004.
Claimants signed the Uniform Submission Agreement: March 10, 2004.

Joint Statement of Answer and Counterclaim filed by Respondents on or about: June 1, 2004.
Respondent Avalon did not sign the Uniform Submission Agreement.
Respondent Au did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following cause of action: failure to pay commissions and compensation. Unless specifically admitted in their Reply to the Counterclaim, Claimants 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 their Counterclaim, Respondents

asserted the following causes of action: conversion; breach of fiduciary duty; and breach of contract.

RELIEF REQUESTED

Claimants requested:

- (a) on behalf of Claimant Hieber, in the sum of \$7,149.97 for commissions which are doubled to \$14,299.94, plus interest to March 8, 2004 of \$4128.62 and \$3.58 per day thereafter;
- (b) on behalf of Claimant Holbrook, in the sum of \$8,032.50 for commissions which are doubled to \$16,065.00, plus interest to March 8, 2004 of \$280.05 and \$4.02 per day thereafter;
- (c) on behalf of Claimant Hieber, a finding that the wages were willfully withheld and therefore she is entitled to liquidated damages of \$1,787.49, plus \$10.28 interest from March 8, 2004 and \$0.44 per day thereafter;
- (d) on behalf of Claimant Holbrook, a finding that the wages were willfully withheld and therefore she is entitled to liquidated damages of \$2,008.13, plus \$11.66 in interest from March 8, 2004 and \$0.50 per day thereafter;
- (e) on behalf of Claimant Hieber, a finding that Respondents improperly filed the March 4, 2004 U5 amendment to the February 20, 2004 in order to harass and inure her and that she is entitled to: (i) damages and punitive damages in an amount to be determined by the Arbitrators; (ii) a ruling of the Panel ordering the expungement of the information contained in the March 4, 2004 U5 Amendment from the Central Registration Depository as defamatory; and (iii) on behalf of both Claimants, reasonable attorneys' fees, filing fees, costs, and disbursements.

In their Reply to the Counterclaim, Claimants requested a denial of the Respondents' Counterclaim and the relief sought in the Amended Statement of Claim.

Respondents requested that the Panel dismiss the Statement of Claim in its entirety; grant Respondents' Counterclaims in their entirety; and such other and further relief as the Panel deems appropriate. On their Counterclaims, Respondents requested an unspecified amount of compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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. Respondents Avalon and Au are jointly and severally liable for and shall pay to Claimant Holbrook the sum of \$13,418.92 (\$6,709.46, doubled pursuant to Labor Law, section 191-c(3)) as compensatory damages.
2. Respondents Avalon and Au are jointly and severally liable for and shall pay to Claimant Heiber the sum of \$14,299.94 (\$7,149.97 doubled pursuant to Labor Law, section 191-c(3)) as compensatory damages.
3. Respondents Avalon and Au are jointly and severally liable for and shall pay to Claimant Heiber the sum of \$22,423.89 for attorneys' fees pursuant to Labor Law, section 191-c(3)).
4. The Panel recommends the expungement of the amended Form U5 filed by Respondent Avalon Partners, Inc. (CRD 41357) with NASD's Central Registration Depository (CRD) on 3/4/04 on behalf of Claimant Jennifer M. Hieber (CRD 2383062). The amended U5 filing is to be expunged in its entirety. The new information reported via the amended U5 filing (i.e., "yes" answers to disclosure questions 7B, 7F(1) and 7F(2) and corresponding Internal Review and Termination U5 Disclosure Reporting Pages) is the subject of this dispute. Since the remaining information contained in the 3/4/04 amended U5 filing is identical to the information reported on the Full (initial) Form U5 filed by Respondent Avalon Partners, Inc. on 2/19/04, the amended U5 is ordered expunged in its entirety and only the original (Full) Form U5 filing should be contained in Claimant Hieber's CRD record. The expungement recommendation is based on the defamatory nature of the information contained in CRD.
5. 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	= \$175.00
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. Accordingly, Avalon Partners, Inc. is a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

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 @ \$1,000.00	= \$1,000.00
Pre-hearing conference: October 5, 2004 1 session	
Seven (7) Hearing sessions @ \$1,000.00	= \$7,000.00
Hearing Dates: June 1, 2005 2 sessions	
June 2, 2005 2 sessions	
June 3, 2005 3 sessions	
Total Forum Fees	= \$8,000.00

1. The Panel has assessed \$8,000.00 of the forum fees against Respondent Avalon.

Fee Summary

1. Claimants are jointly and severally liable for:	
<u>Initial Filing Fee</u>	= \$ 175.00
Total Fees	= \$ 175.00
<u>Less payments</u>	= \$ 775.00
Refund Due Claimants	= \$ 600.00
2. Respondent Avalon is solely liable for:	
Member Fees	= \$ 3,825.00
<u>Forum Fees</u>	= \$ 8,000.00
Total Fees	= \$11,825.00
<u>Less payments</u>	= \$ 3,625.00
Balance Due NASD Dispute Resolution	= \$ 8,200.00
3. Respondents are jointly and severally liable for:	
Counterclaim Filing Fee	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 500.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

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NASD REGULATION

007/007

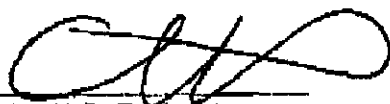
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ARBITRATION PANEL

Charles H. B. Braisted	•	Public Arbitrator, Presiding Chairperson
Madelon M. Rosenfeld, Esq.	-	Public Arbitrator
Glen R. Stifelman	-	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.



Charles H. B. Braisted
Public Arbitrator, Presiding Chairperson

Signature Date

Madelon M. Rosenfeld, Esq.
Public Arbitrator

Signature Date

Glen R. Stifelman
Non-Public Arbitrator

Signature Date

July 7, 2005
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Charles H. B. Braisted	-	Public Arbitrator, Presiding Chairperson
Madelon M. Rosenfeld, Esq.	-	Public Arbitrator
Glen R. Stifelman	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

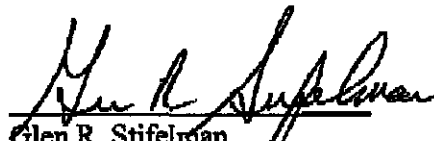
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Charles H. B. Braisted
Public Arbitrator, Presiding Chairperson

Signature Date

Madelon M. Rosenfeld, Esq.
Public Arbitrator

Signature Date



Glen R. Stifelman
Non-Public Arbitrator



Signature Date



Date of Service (For NASD Dispute Resolution use only)