

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Smith Hayes Financial Services Corp.

and

04-02033
Omaha, Nebraska

Respondent

Stephen J. Lococo

Counter-Claimant

Stephen J. Lococo

and

Counter-Respondent

Smith Hayes Financial Services Corp.

NATURE OF THE DISPUTE

Member Firm vs. Associated Person,
Associated Person vs. Member Firm

REPRESENTATION OF PARTIES

Smith Hayes Financial Services Corp. ("**Claimant**" or "**Smith Hayes**") was represented by David R. Buntain, Esq., of Cline, Williams, Wright, Johnson & Oldfather, L.L.P., Lincoln, Nebraska.

Stephen J. Lococo ("**Respondent**" or "**Lococo**") was represented Mary L. Hewitt, Esq., of McGill, Gotsdiner, Workman & Lepp, P.C., Omaha, Nebraska.

CASE INFORMATION

The Statement of Claim was filed on or about March 25, 2004. The Submission Agreement of Claimant, Smith Hayes Financial Services Corp., was signed on or about March 23, 2004. Claimant's Reply to the Counterclaim was filed on or about May 27, 2004.

The Statement of Answer and Counterclaim was filed by Respondent, Stephen J. Lococo, on or about May 17, 2004. The Submission Agreement of Respondent, Stephen J. Lococo, was filed on or about May 14, 2004.

CASE SUMMARY

Claimant alleges a failure to repay a loan agreement. On or about August 13, 2002, Smith Hayes advanced to Lococo as a loan the sum of \$91,826.37. This loan was memorialized in a loan agreement. The loan agreement provided that if Lococo's employment should terminate, the entire unpaid principal amount of the loan shall be immediately due and payable. As a result of Lococo's failure to honor his obligations pursuant to the loan agreement, Smith Hayes is requesting \$91,826.37 which includes the principal balance due and owing under the Loan Agreement, plus interest due under the Promissory Note from June 6, 2003 to March 24, 2004, in the amount of \$5,856.76; and future interest due under the Promissory Note to date of payment; and fees and costs.

Unless specifically admitted in his Answer, Respondent Stephen J. Lococo denied the allegations made in the Statement of Claim and asserted affirmative defenses that including the following: Smith Hayes is not entitled to repayment of the signing bonus in that the conditions precedent in the Broker Agreement and/or the Promissory Note entitling Smith Hayes to repayment have not been met; Smith Hayes is not entitled to repayment of the signing bonus in that it wrongfully terminated Lococo in breach of the Broker Agreement; Smith Hayes is not entitled to repayment of signing bonus in that Lococo is not in default on the Note; and Smith Hayes is not entitled to repayment of the signing bonus in that any alleged right to repayment failed for lack of consideration.

In his Counterclaim, Counter-Claimant, Stephen J. Lococo, alleged that Smith Hayes breached the terms of the four-year employment agreement. Lococo also alleged that Smith Hayes is liable for damages resulting from the filing of a defamatory Form U-5, and withholding or destruction of his personal books and records and refusing to pay him commission due to him for over six months.

Unless specifically admitted in its Answer to the Counterclaim, Counter-Respondent, Smith Hayes Financial Services Corp., denied the allegations made in the Counterclaim and asserted affirmative defenses including the following: In response to the Second Counterclaim and Setoff, Smith Hayes alleged that all statements concerning Lococo in the Form U-5 are true; in response to the Second Counterclaim and Setoff, Smith Hayes alleged that it had a privilege to publish the statements in the Form U-5 about which Lococo complained because it had a legal duty to complete and file the Form U-5 when it terminated Lococo's employment; and the Third Counterclaim and Setoff does not state a claim upon which relief may be granted.

RELIEF REQUESTED

Claimant requested an award of \$97,683.13, plus interest of \$5,856.67 together with fees and costs.

In his Answer and Counterclaim, Stephen Lococo, requested an award of \$350,000.00 for lost wages, commission, bonuses and benefits; \$50,000.00 for the withholding and/or destruction of his personal books, records, software programs and informational database; \$100,00.00 for the filing of the libelous and defamatory allegations set forth in the form U-5. Lococo also requested an expungement of the defamatory allegations contained in the Form U-5, plus attorneys' fees, costs and expenses and such other further relief as the arbitrators deemed just and proper.

Counter-Respondent, Smith Hayes Financial Services Corp., denied that Lococo is entitled to the award requested and denied all the allegations of the Request for Award.

OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "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. Respondent, Stephen J. Lococo, is liable for and shall pay to Claimant, Smith Hayes Financial Services Corp., the sum of \$91,826.37 in compensatory damages;
2. Respondent, Stephen J. Lococo, is liable for and shall pay to Claimant, Smith Hayes Financial Services Corp., interest at the rate of 8% per annum from and including June 6, 2003 through and including the date the award is paid in full, pursuant to the terms of the promissory note;
3. Respondent, Stephen J. Lococo's, First Counterclaim and Setoff as set forth in his Counterclaim, is denied with prejudice;
4. Respondent, Stephen J. Lococo's, Second Counterclaim and Setoff as set forth in his Counterclaim, is denied with prejudice;
5. Respondent, Stephen J. Lococo's, Third Counterclaim and Setoff as set forth in his Counterclaim, is denied, in part. Counter-Respondent, Smith Hayes Financial Services Corp, is liable for and shall pay to Counter-Claimant, Stephen J. Lococo, the sum of \$1,200.00 in attorneys' fees pursuant to Neb. Rev. Stat. §48-1228;

6. Claimant, Smith Hayes Financial Services Corp., shall amend Respondent, Stephen J. Lococo's U-5, specifically eliminating violation SEC Rule 17a-3 and the internal policies and procedures relating thereto;
7. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice; and
8. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

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	= \$1,000.00
Counterclaim 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 event giving rise to the dispute. In this matter, the member firm is Smith Hayes Financial Services Corp.

Member surcharge	\$	1,100.00
Pre-hearing process fee	\$	750.00
<u>Hearing process fee</u>	\$	<u>2,750.00</u>
Total Member Fees	\$	4,600.00

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:

1 Pre-hearing session with Panel	x	1,125.00	\$	1,125.00
August 10, 2004	1	session		
7 Hearing session	x	1,125.00	\$	7,875.00

April 20, 2005	2	sessions	
April 21, 2005	2	sessions	
April 22, 2005	2	sessions	
April 27, 2005	1	session	
Total Forum Fees			\$ 9,000.00

The Arbitration Panel has assessed \$4,500.00 of the forum fees to Smith Hayes Financial Services Corp.

The Arbitration Panel has assessed \$4,500.00 of the forum fees to Stephen J. Lococo.

Fee Summary

Claimant and Counter-Respondent, Smith Hayes Financial Services Corp., is liable for:

Initial Filing Fee	= \$	1,000.00
Member Fees	= \$	4,600.00
<u>Forum Fees</u>	= \$	4,500.00
Total Fees	= \$	10,100.00
<u>Less payments</u>	= \$	-5,300.00
Balance Due NASD Dispute Resolution	= \$	4,800.00

Respondent and Counter-Claimant, Stephen J. Lococo, is liable for:

Counterclaim Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	4,500.00
Total Fees	= \$	4,800.00
<u>Less payments</u>	= \$	-1,425.00
Balance Due NASD Dispute Resolution	= \$	3,375.00

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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ARBITRATION PANEL

Richard A. Knudsen - Public Arbitrator, Presiding Chair
Thomas J. Tarsney, Esq. - Public Arbitrator
Michael R. Wendel - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Richard A. Knudsen
Richard A. Knudsen
Public Arbitrator, Presiding Chair

05/04/05
Signature Date

/s/ Thomas J. Tarsney, Esq.
Thomas J. Tarsney, Esq.
Public Arbitrator

05/26/05
Signature Date

/s/ Michael R. Wendel
Michael R. Wendel
Non-Public Arbitrator

05/03/05
Signature Date

05/04/05
Date of service

NASD Dispute Resolution, Inc.
Arbitration No. 04-02033
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Richard A. Knudsen - Public Arbitrator, Presiding Chair
Thomas J. Tarsney, Esq. - Public Arbitrator
Michael R. Wandel - Non-Public Arbitrator

Concurring Arbitrators:

Richard A. Knudsen
Richard A. Knudsen
Public Arbitrator, Presiding Chair

May 4, 2005
Signature Date

Thomas J. Tarsney, Esq.
Thomas J. Tarsney, Esq.
Public Arbitrator

Signature Date

Michael R. Wandel
Michael R. Wandel
Non-Public Arbitrator

Signature Date

Date of service

NASD Dispute Resolution, Inc.
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Thomas J. Tarnney, Esq. - Public Arbitrator
Michael R. Wendel - Non-Public Arbitrator

Concurring Arbitrators:

Richard A. Knudsen
Public Arbitrator, Presiding Chair

Signature Date

Thomas J. Tarnney, Esq.
Public Arbitrator

May 26, 2005
Signature Date

Michael R. Wendel
Non-Public Arbitrator

Signature Date

Date of service

NASD Dispute Resolution, Inc.
Arbitration No. 04-02033
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ARBITRATION PANEL

Richard A. Knudsen - Public Arbitrator, Presiding Chair
Thomas J. Taraney, Esq. - Public Arbitrator
Michael R. Wendel - Non-Public Arbitrator

Concurring Arbitrators:

Richard A. Knudsen
Public Arbitrator, Presiding Chair

Signature Date

Thomas J. Taraney, Esq.
Public Arbitrator

Signature Date

Michael R. Wendel
Michael R. Wendel
Non-Public Arbitrator

5/2/05
Signature Date

Date of service