

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Jason Zahtila (Claimant) v. Commerce One Financial, Inc., f/k/a Murjen Financial Inc., and Thomas J. Jennings

Case Number: 04-02664

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Jason Zahtila hereinafter referred to as "Claimant": Phillip Raible, Esq., Mintz and Gold, New York, NY.

Respondents Commerce One Financial, Inc. f/k/a Murjen Financial Inc., ("Commerce One") and Thomas J. Jennings ("Jennings"), hereinafter collectively referred to as "Respondents": Rafael Castilla, Esq., Baker & McKenzie, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: April 8, 2004.

Response to Respondents' Answer and Counterclaim filed on or about: July 8, 2004.

Claimant signed the Uniform Submission Agreement: April 8, 2004.

Joint Statement of Answer and Counterclaim filed by Respondents on or about: June 21, 2004.

Respondent Commerce One signed the Uniform Submission Agreement: September 7, 2004.

Respondent Jennings signed the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: conversion; tortious interference; slander; breach of contract; violations of New York Labor Law, and fraud.

Unless specifically admitted in its response to the Answer and Counterclaim, Claimant denied the allegations made in the Answer and Counterclaim and asserted various affirmative defenses.

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

Respondents asserted the following causes of action in its Counterclaim: tortious interference; breach of contract, and *per se* slander.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$224,400.00, plus interest at the statutory rate, together with attorneys' fees and the costs of this action; additional compensatory damages recoverable under §198 of the New York State Labor Law in the amount of \$56,100.00; an order enjoining Respondents from contacting Zahtila's clients; that Respondents process Zahtila's clients' account transfer requests without delay or interference; that Respondents deliver to Zahtila all of his personal property which is in the Respondents' possession, custody or control, including, without limitation, Zahtila's client records; and such other and further relief as the Panel may deem just and proper.

Respondents requested that the Statement of Claim be dismissed with prejudice; that Claimant take nothing. In their Counterclaims, Respondents requested that they be awarded compensatory damages of \$200,000.00; reasonable and necessary attorneys' fees, punitive damages, costs; and such other and further relief as is just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing Claimant withdrew, with prejudice, its request for an Order enjoining Respondents from contacting Claimant's clients and for an Order requiring Respondents to deliver all of Claimant's personal property.

At the hearing Respondents withdrew, with prejudice, their First and Third Counterclaims.

The parties 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, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are liable to Claimant for \$202,443.60 in compensatory damages, plus interest at the rate of 9% per annum through September 7, 2005, which amounts to \$26,408.00.
2. Respondents are liable to Claimant for attorneys' fees in the amount of \$46,085.28. The Panel awarded attorneys' fees in accordance with the New York State Labor Laws.

Thus, the total award to Claimant, inclusive of compensatory damages, interest and attorneys' fees, equals to \$274,936.88.

3. Claimant is liable to Respondents for \$43,187.76 in compensatory damages plus interest at the rate of 9% per annum through September 7, 2005, which amounts to \$7,699.25.

Thus, the total award to Respondents, inclusive of compensatory damages and interest, equals \$50,887.01.

4. In accordance with items 1, 2, 3 above, Claimant's total Award of \$274,936.88 shall be offset.

by Respondents' total award of \$50,887.01 and therefore, Respondents shall pay to Claimant the sum of \$224,049.87.

5. The Panel orders Respondents to process Claimant's client account transfer requests without delay or interference.
6. Any and all relief not specifically addressed in this award 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
Counterclaim filing fee	= \$ 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 event giving rise to the dispute. Accordingly, Commerce One Financial, Inc. is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450 per session	= \$ 900.00
Pre-hearing conferences:	
December 22, 2004	1 session
April 25, 2005	1 session
One (1) Pre-hearing session with Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference:	
August 24, 2004	1 session
Six (6) Hearing sessions @ \$1,125.00 per session	= \$ 6,750.00
Hearing Dates:	
May 2, 2005	2 sessions
May 5, 2005	2 sessions
June 9, 2005	2 sessions
Total Forum Fees	= \$ 8,775.00

1. The Panel has assessed \$1,316.25 of the forum fees against Claimant.
2. The Panel has assessed \$7,458.75 of the forum fees jointly and severally to Respondents.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

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|---|-------------|
| 1. Respondent Commerce One, requested audio cassette recordings | = \$ 120.00 |
| 2. Respondent Commerce One, requested audio cassette recordings | = \$ 180.00 |

Fee Summary

- | | |
|--|---------------|
| 1. Claimant is solely liable for: | |
| Initial Filing Fee | = \$ 300.00 |
| <u>Forum Fees</u> | = \$ 1,316.25 |
| Total Fees | = \$ 1,616.25 |
| <u>Less Payments</u> | = \$ 2,125.00 |
| Refund Due Claimant | = \$ 508.75 |
| 2. Respondent Commerce One is solely liable for: | |
| Member Fees | = \$ 5,200.00 |
| <u>Administrative Costs</u> | = \$ 300.00 |
| Total Fees | = \$ 5,500.00 |
| <u>Less Payments</u> | = \$ 5,500.00 |
| Balance Due NASD Dispute Resolution | = \$.00 |
| 3. Respondents, Commerce One and Jennings, are jointly and severally liable for: | |
| Counterclaim Filing Fee | = \$ 1,000.00 |
| <u>Forum Fees</u> | = \$ 7,458.75 |
| Total Fees | = \$ 8,458.75 |
| <u>Less Payments</u> | = \$ 1,945.00 |
| Balance Due NASD Dispute Resolution | = \$ 6,513.75 |

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

ARBITRATION PANEL

Alan Shaw, Esq.	-	Public Arbitrator, Presiding Chairperson
Arthur M. Handler, Esq.	-	Public Arbitrator
John J. McCombe	-	Non-Public Arbitrator

Consenting Arbitrators' Signatures

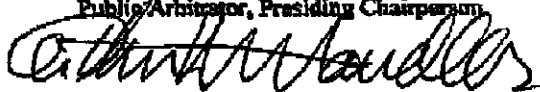
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Alan Shaw, Esq.
Public Arbitrator, Presiding Chairperson

SEPT 6, 2005

Signature Date



Arthur M. Handler, Esq.
Public Arbitrator

Sept 6, 2005

Signature Date

John J. McCombe
Non-Public Arbitrator

Signature Date

SEPTEMBER 7, 2005

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Alan Shaw, Esq.	-	Public Arbitrator, Presiding Chairperson
Arthur M. Handler, Esq.	-	Public Arbitrator
John J. McCombe	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

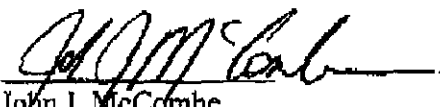
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Alan Shaw, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Arthur M. Handler, Esq.
Public Arbitrator

Signature Date



John J. McCombe
Non-Public Arbitrator



Signature Date

SEPTEMBER 7, 2005

Date of Service (For NASD Dispute Resolution use only)