

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Ronnie Moas (Claimant) v. Ehrenkrantz King Nussbaum, Inc., Anthony Ottimo, Thomas Giugliano, Robert Bursky, and Michael Berlin (Respondents)

Case Number: 04-03227

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Ronnie Moas ("Moas") hereinafter referred to as "Claimant" appeared *pro se*.

Respondent Ehrenkrantz King Nussbaum, Inc. ("EKN"), Anthony Ottimo ("Ottimo"), Thomas Giugliano ("Giugliano"), Robert Bursky ("Bursky"), and Michael Berlin ("Berlin"): Robert M. Bursky, Esq., Garden City, NY.

CASE INFORMATION

Statement of Claim filed on or about: April 30, 2004.

Claimant signed the Uniform Submission Agreement: April 22, 2004.

Joint Statement of Answer filed by Respondents EKN, Ottimo, Giugliano, and Berlin hereinafter collectively referred to as "Respondents" on or about: July 22, 2004.

Respondent EKN signed the Uniform Submission Agreement: July 11, 2004.

Respondent Ottimo signed the Uniform Submission Agreement: July 21, 2004.

Respondent Giugliano signed the Uniform Submission Agreement: July 21, 2004.

Respondent Berlin signed the Uniform Submission Agreement: July 21, 2004.

Respondent Bursky did not file a Statement of Answer or sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: libel and slander on Form U-5; failure to pay owed commissions and compensation; breach of employment contract; and illegal securities practices by EKN.

Unless specifically admitted in their Answer, Respondents EKN, Ottimo, Giugliano, and Berlin denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$51,000.00; punitive damages in the amount of \$148,000.00; that the arbitrators forbid Respondents from using proprietary models; erase slander on Form U-5; and costs.

Respondents requested that all claims be dismissed, that Claimant be assessed all forum fees and all other NASD charges (including EKN's member surcharge), and costs.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Robert Bursky, Esq. is not a member nor is he an associated person of an NASD member firm and, therefore, was not required to arbitrate in this forum and did not submit to NASD Dispute Resolution's jurisdiction.

After the conclusion of the hearings in this matter, Claimant filed a Motion for Reconsideration and Respondents filed a Motion for Injunctive Relief. The Panel reviewed all submissions and, after due deliberation, rendered its decisions as reflected in the Award section below.

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

1. Claimant's claims for monetary damages are dismissed in their entirety.
2. The Panel directs the expungement by NASD from the Central Registration Depository ("CRD") of the language in Part 1 Section 3 of the Internal Review DRP submitted on the Full Form U5 filed by EKN on the record of Ronnie Moas on 3/30/04 (i.e. CORRUPTION/TAKING/DESTRUCTION OF COMPANY COMPUTER PROGRAMS AND/OR WRITTEN MATERIALS, AND SOLICITATION OF FIRM CLIENTS IN BREACH OF HIS EMPLOYMENT AGREEMENT). The Panel recommends that Part 1 Section 3 of the Internal Review DRP on the Full Form U5 filed by EKN on 3/30/04 be revised to read in its entirety as follows: "TAKING OF COMPANY WRITTEN MATERIALS IN BREACH OF HIS EMPLOYMENT AGREEMENT. HE CONTINUES TO SLANDER OUR FIRM (E.K.N.) BY SAYING TO EVERYONE THAT WE ARE AN ILLEGAL ENTERPRISE." The Panel further directs the expungement of the Form U5 Amendment filed by EKN on the record of Ronnie Moas on 08/12/2004. This expungement

directive is based on the defamatory nature of the information.

3. The Panel directs Claimant to return, by February 14, 2005, to Respondent EKN all written materials taken by him from the firm's office. Claimant may (as the panel ruled in its original order regarding such return) keep a copy of each for his own use.
4. For each calendar day beyond February 14, 2005 that all or any such materials remain undelivered, Claimant is liable for and shall pay to Respondent EKN a sanction in the amount of \$500.00 per day.
5. All motions and applications of the parties made during the hearing or in submissions made subsequent to the last day of hearing on December 21, 2004 that are not specifically addressed herein are denied in their entirety.
6. 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 = \$300.00

NASD Dispute Resolution preliminarily waived Claimant's initial claim filing fee. The Panel determined to assess the initial claim filing fee against Claimant.

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, Ehrenkrantz King Nussbaum, 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: October 18, 2004 1 session	

Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates: December 20, 2004 2 sessions	

December 21, 2004 2 sessions

Total Forum Fees = \$5,625.00

The Panel has assessed \$5,625.00 of the forum fees to Claimant.

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.

Respondent EKN requested copies of hearing tapes = \$210.00

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$5,625.00
Total Fees	= \$5,925.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$5,925.00

2. Respondent EKN is solely liable for:

Administrative Costs	= \$ 210.00
<u>Member Fees</u>	= \$5,200.00
Total Fees	= \$5,410.00
<u>Less payments</u>	= \$5,425.00
Refund Due EKN	= \$ 15.00

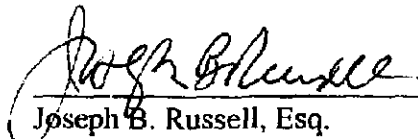
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Joseph B. Russell, Esq.	-	Public Arbitrator, Presiding Chairperson
Kenneth L. Stewart	-	Public Arbitrator
Burton M. Fendelman, 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 which is my award.



Joseph B. Russell, Esq.
Public Arbitrator, Presiding Chairperson

2/2/05
Signature Date

Kenneth L. Stewart
Public Arbitrator

Signature Date

Burton M. Fendelman, Esq.
Non-Public Arbitrator

Signature Date

February 4, 2005

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

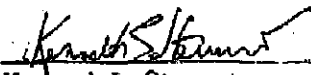
Joseph B. Russell, Esq.	-	Public Arbitrator, Presiding Chairperson
Kenneth L. Stewart	-	Public Arbitrator
Burton M. Fendelman, Esq.	-	Non-Public Arbitrator

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 which is my award.

Joseph B. Russell, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Kenneth L. Stewart
Public Arbitrator

February 10, 2005
Signature Date

Burton M. Fendelman, Esq.
Non-Public Arbitrator

Signature Date

February 4, 2005
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Joseph B. Russell, Esq.	-	Public Arbitrator, Presiding Chairperson
Kenneth L. Stewart	-	Public Arbitrator
Burton M. Fendelman, Esq.	-	Non-Public Arbitrator

Consenting Arbitrators' Signatures

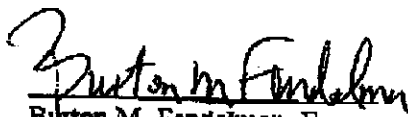
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Joseph B. Russell, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Kenneth L. Stewart
Public Arbitrator

Signature Date



Burton M. Fendelman, Esq.
Non-Public Arbitrator

February 2, 2005

Signature Date

February 4, 2005

Date of Service (For NASD Dispute Resolution use only)