

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant/Counter-Respondent  
Dominion Investor Services, Inc.

Case Number: 04-03749

Name of the Respondent/Counter-Claimant  
Joel I. Franklin

Hearing Site: Dallas, Texas

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**NATURE OF THE DISPUTE**

Member Firm vs. Associated Person

**REPRESENTATION OF PARTIES**

Claimant/Counter-Respondent Dominion Investor Services, Inc., hereinafter referred to as "Dominion": George M. Bromley, Esq., of the Law Offices of George "Rocky" Bromley, located in San Antonio, Texas.

Respondent/Counter-Claimant Joel I. Franklin, hereinafter referred to as "Franklin": John Dunlap, Esq. of the firm of Gwinn & Roby, located in Dallas, Texas.

**CASE INFORMATION**

Statement of Claim filed: May 25, 2004.

Dominion signed the Uniform Submission Agreement: June 10, 2004.

Statement of Answer and Counter-Claim filed by Franklin on: February 18, 2005.

Franklin signed the Uniform Submission Agreement: February 16, 2005.

Franklin's Motion for Partial Summary Judgment filed on: October 7, 2005.

Dominion's Response to Franklin's Motion for Partial Summary Judgment filed on: October 31, 2005.

**CASE SUMMARY**

Franklin asserted the following causes of action: Breach of Contract and indemnification. The cause of action related to Franklin's failure to pay the associated legal costs and expenses incurred by Dominion for defending an arbitration brought by a client of Franklin, thereby breaching the Associated Salesperson Agreement executed by the parties.

Unless specifically admitted in his Answer, Franklin denied the allegations made in the Statement of Claim and asserted that under Texas law, the contract provision does not meet the "express negligence test" and claims for indemnity in Texas must meet the rule. Franklin filed a

counterclaim asserting that pursuant to the contract, the prevailing party is entitled to recover attorneys' fees and expenses. Therefore, because Dominion's claim has no basis in law and fact, and the "express negligence test" prohibits recovery of any damages, Franklin is entitled to recovery of his fees and expenses.

**RELIEF REQUESTED**

Dominion Investor Services, Inc. requested:

Compensatory Damages	\$ 23,634.92
Attorneys' Fees	Reasonable and necessary fees to be determined at hearing
Other Costs	Expenses incurred in prosecuting this claim
Other Monetary/Non-Monetary Relief if any:	Such other and further relief, both in law and equity, to which Dominion may be entitled.

Joel I. Franklin requested that Dominion take nothing and that with respect to his counter-claim, Franklin recover:

Attorneys' Fees	Unspecified amount for breach of contract and pursuant to Section 38.001(8) of the Texas Civil Practice and Remedies Code
Other Costs	Incurred in defense of Dominion's claim
Other Monetary/Non-Monetary Relief if any:	Such other and further relief, both in law and equity, to which Dominion may be entitled.

**OTHER ISSUES CONSIDERED AND DECIDED**

On November 18, 2005, the Panel denied Franklin's Motion for Partial Summary Judgment.

**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. Claimant/Counter-Respondent Dominion Investor Services, Inc.'s Statement of Claim is hereby dismissed and denied in its entirety;
2. Respondent/Counter-Claimant Joel I. Franklin's Counterclaim is hereby dismissed and denied in its entirety;
3. The parties shall bear their own costs of arbitration, including any attorneys' fees,

- except for those sums specifically enumerated in this decision; and,  
4. 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	= \$ 750.00
Counter claim filing fee	= \$ 250.00

#### **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, Dominion Investor Services, Inc. is a party and the following member fees are assessed:

Member surcharge	= \$ 425.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed: None.

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), 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 4, 2005 1 session	
One (1) Hearing sessions @ \$1,000.00	= \$ 1,000.00
Hearing Date: November 22, 2005 1 session	
Total Forum Fees	= \$ 2,000.00

The Panel has assessed \$1,000.00 of the forum fees to Dominion Investor Services, Inc. and the remaining \$1,000.00 of the forum fees to Joel I. Franklin.

### **FEES SUMMARY**

Dominion Investor Services, Inc. is solely liable for:

Initial Filing Fee	= \$ 750.00
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Member Fees	= \$ 3,375.00
Forum Fees	= \$ 1,000.00
Total Fees	= \$ 5,125.00
Less payments	= \$ 850.00
Balance Due NASD Dispute Resolution	= \$ 4,275.00

Joel I. Franklin is solely liable for:


Counterclaim Filing Fee	= \$ 250.00
Forum Fees	= \$ 1,000.00
Total Fees	= \$ 1,250.00
Less payments	= \$ 1,250.00
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.

ARBITRATION PANEL

Simeon R. Trotter - Non-Public Arbitrator, Presiding Chairperson  
Charles E. Martin, CPA - Non-Public Arbitrator  
William D. Connally - Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
Simeon R. Trotter  
Non-Public Arbitrator, Presiding Chairperson

11.30.05  
Signature Date

\_\_\_\_\_  
Charles E. Martin, CPA  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
William D. Connally  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

12/1/05   
Date of Service (For NASD Dispute Resolution office use only)

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Simeon R. Trotter  
Non-Public Arbitrator, Presiding Chairperson

Signature Date

*Charles E. Martin*

*11-30-05*

Charles E. Martin, CPA  
Non-Public Arbitrator

Signature Date

William D. Connally  
Non-Public Arbitrator

Signature Date

*12/1/05 WDC*

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Joel L. Franklin is solely liable for:

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