

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Estate of Stephen Roach (Claimant) v. Cantor Fitzgerald Securities, Inc. (Respondent)

Case Number: 04-04068

Hearing Site: New York, New York

Nature of the Dispute: Associated Person v. Member.

REPRESENTATION OF PARTIES

Claimant The Estate of Stephen Roach hereinafter referred to as "Claimant": Deborah E. Lans, Esq., and Gary Lerner, Esq., Cohen Lans, LLP, New York, NY. Previously represented by: Jeffrey C. Slade, Esq., Slade & Associates, P.C., New York, NY.

Respondent Cantor Fitzgerald Securities, Inc. hereinafter referred to as "Respondent": Michael A. Lampert, Esq., and Sean Lynch, Esq., Saul Ewing, LLP, Princeton, NJ.

CASE INFORMATION

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

Reply to Counterclaim filed on or about: August 10, 2004.

Claimant signed the Uniform Submission Agreement: May 15, 2004.

Statement of Answer and Counterclaim filed by Respondent on or about: July 30, 2004.

Respondent signed the Uniform Submission Agreement: July 29, 2004.

CASE SUMMARY

Claimant asserted the following cause of action: failure to pay owed compensation. Unless specifically admitted in its Reply to Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Counterclaim, Respondent asserted the following causes of action: material omissions and fraud.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in the amount of \$299,306.00 to compensate for the unpaid portion of Mr. Roach's annual base salary from July 1, 2000 through September 11, 2001.
2. Compensatory damages in the amount of \$250,000.00 to compensate for the unpaid amount of Mr. Roach's guaranteed annual bonus for fiscal year 1999.
3. Compensatory damages in the amount of \$135,000.00 to compensate the Estate for the shortfall between Mr. Roach's cash bonus for fiscal year 2001 and the promised amount.
4. Compensatory damages in the amount of \$2,740,400.00 to make up for the reduced award that the estate will receive from the 9/11 Victim Compensation Fund as a result of the shortfall in Mr. Roach's actual compensation, as previously noted.

Respondent requested compensatory damages and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant filed a Motion in Limine on three grounds: Dead Man's statute; evidence of compensation to Claimant from Respondent and its affiliates; fraud regarding concealment of *Third Amended Employment Agreement*. The Panel denied the Motion on the first two grounds but granted the Motion with respect to the fraud counter-claim.

At the hearing, Claimant submitted a recalculation of their request for damages and included a request for pre-judgment interest. The Panel allowed the recalculation.

At the hearing, Claimant withdrew their claim for unpaid compensation for 1999.

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. Cantor Fitzgerald is liable for and shall pay to Claimant compensatory damages in the amount of \$302,083.00 on the salary claim;
2. Cantor Fitzgerald is liable for and shall pay to Claimant interest in the amount of \$57,237.00 on the salary claim;
3. Cantor Fitzgerald is liable for and shall pay to Claimant compensatory damages in the amount of \$135,000.00 on the bonus claim;
4. Cantor Fitzgerald is liable for and shall pay to Claimant interest in the amount of \$21,354.00 on the bonus claim;
5. Cantor Fitzgerald is liable for and shall pay to Claimant compensatory damages in the amount of \$203,427.00 on the Victim's Compensation Fund claim;
6. Respondent's counter-claim is denied in its entirety;
7. Any and all relief not specifically addressed herein is denied.

DISSENTING ARBITRATOR'S REPORT

Chairperson Steven T. Stern dissents:

I respectfully dissent. In my opinion, Respondent is entitled to be credited with having paid Mr. Roach an amount in 2000-2001 that exceeded its obligation under the Second Amended Employment Agreement so that the salary claim fails.

On the bonus claim, I would find that Respondent miscalculated the amount to which the Roach estate was entitled by Respondent's self-imposed obligation. The bonus paid to Mr. Roach in 2000 was \$285,000. The post-mortem bonus paid to the Estate was only \$150,000 so that the estate is entitled to \$135,000. I would not award interest on that amount because there was no contractual obligation, but rather an estoppel basis on which the \$135,000 was due.

I would not award any amount on the VCF claim because to do so would be mere speculation.

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	= \$ 600.00
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 person at the time of the events giving rise to the dispute. Accordingly, Cantor Fitzgerald & Co. is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

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 a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: March 24, 2005 1 session	
One (1) Pre-hearing session with Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: January 10, 2005 1 session	

Seven (7) Hearing sessions @ \$1,200.00 = \$8,400.00

Hearing Dates:	April 18, 2005	2 sessions
	April 19, 2005	2 sessions
	April 20, 2005	2 sessions
	April 21, 2005	1 session

Total Forum Fees = \$10,050.00

1. The Panel has assessed \$10,050.00 of the forum fees against Respondent.

Fee Summary

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 600.00
Total Fees	= \$ 600.00
<u>Less payments</u>	= \$ 3,200.00
Refund Due Claimant	= \$ 2,600.00

2. Respondent is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 10,050.00
Total Fees	= \$19,100.00
<u>Less payments</u>	= \$10,050.00
Balance Due NASD Dispute Resolution	= \$ 9,050.00

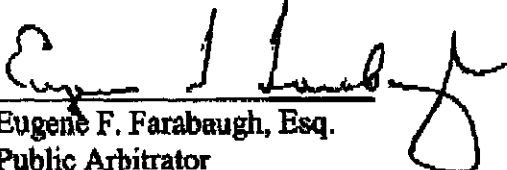
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Steven T. Stern, Esq.	-	Public Arbitrator, Presiding Chairperson
Eugene F. Farabaugh, Esq.	-	Public Arbitrator
David Crystal, II	-	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.



Eugene F. Farabaugh, Esq.
Public Arbitrator

April 25, 2005

Signature Date

David Crystal, II
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

Steven T. Stern, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

April 27, 2005

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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Eugene F. Farabaugh, Esq.
Public Arbitrator

Signature Date



David Crystal, II
Non-Public Arbitrator

4/25/2005

Signature Date

Dissenting Arbitrator's Signature

Steven T. Stern, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

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Public Arbitrator

Signature Date

David Crystal, II
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature



Steven T. Stern, Esq.
Public Arbitrator, Presiding Chairperson

4/25/04
Signature Date

April 27, 2005

Date of Service (For NASD Dispute Resolution use only)