

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Michael S. Ortiz

and

Case Number: 04-04859
Hearing Site: Chicago, Illinois

Respondent

Cargill Investor Services, Inc.

NATURE OF DISPUTE

Customer v. Member

REPRESENTATION OF PARTIES

Michael S. Ortiz, ("Claimant"), was represented by Brian Martin, Esq., of Bell, Boyd & Lloyd LLC, located in Chicago, Illinois.

Cargill Investor Services, Inc., ("CIS"), was represented by Melissa M. Bien, Esq., of McGuire Woods LLP, located in Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about July 9, 2004. The Submission Agreement of Claimant was signed on or about June 29, 2004

The Statement of Answer was filed by on or about September 10, 2004. The Submission Agreement of CIS was signed on October 7, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contractual obligation to pay accrued bonus; libel and defamation; violation of Illinois Personal Records Review Act; and claim for benefits under the severance plan.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: CIS acted at all times in good faith and in accordance with the applicable laws; any and all statements made by CIS or any of its employees or agents concerning Claimant were true and or/

substantially true; any and all statements made by CIS or any of its employees or agents concerning Claimant are not per se defamatory; any and all statements made by CIS or any of its agents concerning Claimant are constitutionally protected opinion; CIS cured any violation of the Illinois personnel records violation; CIS's failure to provide records did not damage Claimant; Claimant was terminated for cause; Claimant's damages if any were caused by his own acts or omissions; and, there is no basis in law or fact in which Claimant is entitled to recover punitive damages.

RELIEF REQUESTED

Claimant requested an award in the amount of \$613,200.00.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded costs and attorneys' fees.

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 NASD Dispute Resolution ("NASD").

AWARD

(1) Cargill Investor Services, Inc. is liable for and shall pay to Claimant Michael S. Ortiz the sum of \$30,000 in compensatory damages; and,

(2) Respondent Cargill Investor Services, Inc. (CIS) shall file with CRD an amended Form U5, on Claimant's behalf, within two weeks of the date of service of this award. The amended U5 shall change the "yes" answers (noted on the 11/17/03 U-5) to questions 7B (Internal Review question) and 7F(1) (Termination question) to "no." The DRPs accompanying the amended U-5 shall state, "An Arbitration Panel determined that the Internal Review conducted by CIS did not produce sufficient evidence to support the allegations and therefore the earlier reporting of the termination, filed on 11/17/03, was in error and should not have triggered a U4/U5 disclosure reporting requirement". This explanation will be entered on the Internal Review DRP, Part 1, Item 3 (describe the nature of the internal review) and on the Termination DRP, Item 4 (allegations) and Item 6 (comments); and,

(3) NASD/CRD shall expunge the termination explanation/comment that

accompanies the Reason for Termination as reported on Claimant's Form U5 filed with CRD by Respondent Cargill Investor Services, Inc. (CIS) on 11/17/03. The original termination explanation/comment ("Was a founder and solicited interest in a start-up fund without prior approval and knowledge of CIS.") shall be expunged and replaced with the statement on page 6 of Respondent's Arbitration Pre-Hearing Brief - "Engaged in unauthorized outside business activities that constituted a conflict of interest with his employment at CIS". Expungement is ordered pursuant to NASD Notices to Members 99-09 and 99-54. Claimant must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive; and,

(4) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

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 = \$375.00

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(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is Cargill Investor Services, Inc.

Member surcharge = \$2,250.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$4,000.00

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator x \$1,200.00 = \$2,400.00
Pre-hearing conference(s): Date 1 session

| | |
|--|--------------------|
| Four (4) Hearing sessions x \$1,200.00 | = \$4,800.00 |
| Hearing Dates: April 12, 2004 2 sessions | |
| April 13, 2004 2 sessions | |
| <hr/> Total Forum Fees | <hr/> = \$7,200.00 |

The Arbitration Panel has assessed \$3,600.00 of the forum fees to Michael S. Ortiz.
The Arbitration Panel has assessed \$3,600.00 of the forum fees to Cargill Investor Services, Inc.

Fee Summary

Claimant, Michael Ortiz, is liable for:

| | |
|---|---------------------|
| Initial Filing Fee | = \$ 375.00 |
| Forum Fees | = \$ 3,600.00 |
| <hr/> Total Fees | <hr/> = \$ 3,975.00 |
| Less payments | = \$ 1,575.00 |
| <hr/> Balance Due NASD Dispute Resolution | <hr/> = \$ 2,400.00 |

Respondent, Cargill Investor Services, Inc. is liable for:

| | |
|---|---------------------|
| Member Fees | = \$ 7,000.00 |
| Forum Fees | = \$ 3,600.00 |
| <hr/> Total Fees | <hr/> = \$10,600.00 |
| Less payments | = \$ 5,196.00 |
| <hr/> Balance Due NASD Dispute Resolution | <hr/> = \$ 5,404.00 |

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

ARBITRATION PANEL

Terry F. Peppard, Esq. - Public Arbitrator, Presiding Chair
James P. O'Donnell - Public Arbitrator
Frank Samuelsohn - Non-Public Arbitrator

Concurring Arbitrators:

Terry F. Peppard, Esq.
Public Arbitrator, Presiding Chair

Signature Date

James P. O'Donnell
Public Arbitrator

Signature Date

Frank Samuelsohn
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only) _____

05/29/2005 11:22 FAX

NASD

NASD Dispute Resolution
Arbitration No. 04-04859
Award Page 5 of 5

Concurring Arbitrators:

Terry F Peppard
Terry F. Peppard, Esq.
Public Arbitrator, Presiding Chair

5/23/05
Signature Date

James P. O'Donnell
Public Arbitrator

Signature Date

Frank Samuelsohn
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only) _____

NASD Dispute Resolution
Arbitration No. 04-04859
Award Page 5 of 5

Concurring Arbitrators:

Terry F. Peppard, Esq.
Public Arbitrator, Presiding Chair

Signature Date

James P. O'Donnell
Public Arbitrator

Signature Date



Frank Samuelsohn
Non-Public Arbitrator



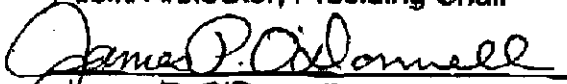
Signature Date

Date of Service (For NASD office use only) _____

NASD Dispute Resolution
Arbitration No. 04-04859
Award Page 5 of 5

Concurring Arbitrators:

Terry F. Peppard, Esq.
Public Arbitrator, Presiding Chair


James P. O'Donnell
Public Arbitrator

Signature Date

5/23/05

Signature Date

Frank Samuelsohn
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only) _____