

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

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In the Matter of the Arbitration Between:

McMahan Securities Co., L.P. (Claimant) v. Michael Shillan (Respondent)

and

Michael Shillan (Claimant) v. McMahan Securities Co., L.P. (Respondent)

Case Number: 04-05460  
(consolidated with 04-05656)

Hearing Site: New York, New York

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Nature of the Dispute 04-05460: Member v. Associated Person

Nature of the Dispute 04-05656: Associated Person v. Member

**REPRESENTATION OF PARTIES**

04-05460

Claimant McMahan Securities Co. L.P. hereinafter referred to as "MSC": Leigh R. Isaacs, Esq., Isaacs & Evans, and LLP, New York, NY.

Respondent Michael Shillan hereinafter referred to as "Shillan": Brian J. Neville, Esq., Law Offices of Brian J. Neville, LLC, New York, NY.

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Claimant Michael Shillan hereinafter referred to as "Shillan": Brian J. Neville, Esq., Law Offices of Brian J. Neville, LLC, New York, NY.

Respondent McMahan Securities Co. L.P. hereinafter referred to as "MSC": Leigh R. Isaacs, Esq., Isaacs & Evans, and LLP, New York, NY.

**CASE INFORMATION**

04-05460

Statement of Claim filed by MSC on or about: August 2, 2004.

Reply to Counterclaim filed by MSC on or about: December 22, 2005.

Amended Reply to Counterclaim filed by MSC on or about: June 13, 2006.

MSC signed the Uniform Submission Agreement: July 30, 2004.

Statement of Answer and Counterclaim filed by Shillan on or about: December 12, 2005.

Shillan did not submit the Uniform Submission Agreement.

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Statement of Claim filed by Shillan on or about: August 10, 2004.

Shillan signed the Uniform Submission Agreement: July 28, 2004.

MSC did not submit a Statement of Answer or Uniform Submission Agreement.

**CASE SUMMARY**

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MSC asserted the following causes of action: immediate return of the files and office equipment with all data intact, reasonable value in the sum of not less than \$10,800.00 if office equipment is not returned and \$25,900.00 in accordance with the terms of the employment agreement.

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

In his Counterclaim, Shillan asserted the following causes of action: breach of the parties express and/or implied contracts, compensation under the terms of the employment contract, unjust enrichment and/or restitution and violation of Section 448.01 of the Labor Law of Florida.

Unless specifically admitted in its Reply and Amended Reply to the Counterclaim, MSC denied the allegations made in the Counterclaim and asserted various affirmative defenses.

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Shillan asserted the following causes of action: breach of the parties express and/or implied contracts, compensation under the terms of his employment contract, unjust enrichment and/or restitution and violation of Section 448.01 of the Labor Law of Florida.

**RELIEF REQUESTED**

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MSC requested the entry of an award against Shillan as follows:

- A. On the First Claim for Relief, for an order directing Shillan to immediately return the files and office equipment, including all papers, files and documents (electronic or otherwise) relating to Shillan's work performed for MSC;
- B. On the Second Claim for Relief, should Shillan fail to return to MSC the office equipment, MSC should be awarded the reasonable value of said equipment in a sum of not less than \$10,800.00;

- C. On the Third Claim For Relief, the sum of \$25,900.00;
- D. For reasonable attorneys' fees, costs and disbursements which MAC has and will incur in this proceeding; and
- E. For such other and further relief as may be just.

Shillan requested dismissal of the Statement of Claim in its entirety, attorneys' fees, costs, expenses, forum fees, and all other costs in defending MSC's frivolous and meritless claim

In his Counterclaim, Shillan requested compensatory damages in the amount of \$370,312.50, 50% of net investment banking surplus profits, dismissal of the Statement of Claim, costs, expenses and attorneys' fees, together with such other and further relief as the arbitrators deem just and proper.

In its Reply and Amended Reply to the Counterclaim, MSC requested dismissal of the Counterclaim, costs, attorneys' fees and such other and further relief this Panel deems appropriate.

#### 04-05656

Shillan requested compensatory damages in the amount of \$370,312.50, 50% of net investment banking surplus profits, \$20,000.00 for video equipment, reasonable attorneys' fees, liquidated damages, punitive damages, costs, disbursements and such other and further relief as the arbitrators may deem just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Shillan did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement for Case Number 04-05460 but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing is bound by the determination of the Panel on all issues submitted.

MSC did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement for Case Number 04-05656 but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing is bound by the determination of the Panel on all issues submitted.

On or about September 20, 2004, Shillan requested consolidation of the cases and on or about June 1, 2005, the Panel submitted an Order agreeing to consolidate the cases.

On or about June 19, 2006, the Panel granted the parties request to change the venue from Hartford, Connecticut to New York City, New York.

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. MSC is liable for and shall pay to Shillan compensatory damages in the amount of \$250,000.00.
2. The consolidated claims and counterclaims of both the Claimant and Respondent are denied in their entirety, except as provided herein and subject to the interim orders of the Panel including but not limited to the Panel's order issued on or about September 29, 2004 permanently enjoining certain activities, and the order issued on or about June 15, 2006.
3. 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:

<u>04-05460</u>	
Initial claim filing fee	= \$ 1,000.00
Counterclaim filing fee	= \$ 300.00
 <u>04-05656</u>	
Initial claim filing fee	= \$ 300.00

#### **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. In this matter, the member firm McMahan Securities, Co., L.P. Inc. is a party.

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Member Surcharge	= \$ 875.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00

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Member Surcharge	= \$ 1,700.00
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**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

1. McMahan Securities Co., L.L.P is assessed:

Injunctive relief surcharge	= \$ 2,500.00
Additional arbitrator honoraria	= \$ 150.00
Arbitrator travel expenses and costs	= \$ 2,118.69

2. Michael Shillan is assessed:

Additional arbitrator honoraria	= \$ 150.00
Arbitrator travel expenses and costs	= \$ 2,118.69

**Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators that last four (4) hours or less. Forum fees associated with these proceedings are:

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One(1) Decision on discovery-related motions on the papers with three (3) arbitrators @ \$200.00	= \$ 600.00
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Shillan submitted discovery-related motions

Two (2) Pre-hearing conference sessions with Panel @ \$1,125.00/session = \$2,250.00

Pre-hearing conferences: December 13, 2005	1 session
May 31, 2006	1 session

One (1) Injunctive hearing session with Panel @ \$1,125.00/session	= \$ 1,125.00
Injunctive Hearing Date: September 29, 2004 1 session	
Four (4) Hearing sessions with Panel @ \$1,125.00/session	= \$ 4,500.00
Hearing Dates: August 1, 2006 2 sessions	
August 2, 2006 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$ 8,475.00

1. The Panel has assessed \$4,237.50 of the forum fees to MSC.
2. The Panel has assessed \$4,237.50 of the forum fees to Shillan.

### **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 securities.

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| 1. MSC requested copies of hearing tapes     | = \$ 135.00 |
| 2. Shillan requested copies of hearing tapes | = \$ 135.00 |

### **FEE SUMMARY**

#### **04-05460**

- |                                      |               |
|--------------------------------------|---------------|
| 1. MSC is solely liable for:         |               |
| Initial Filing Fee                   | = \$ 1,000.00 |
| Member Fees                          | = \$ 4,375.00 |
| Injunctive Relief Fees               | = \$ 2,500.00 |
| Additional Arbitrator Honoraria      | = \$ 150.00   |
| Arbitrator Travel Expenses and Costs | = \$ 2,118.69 |
| Administrative Costs                 | = \$ 135.00   |
| Forum Fees                           | = \$ 4,237.50 |
| Total Fees                           | = \$14,516.19 |
| Less payments                        | = \$ 6,725.00 |
| Balance Due NASD Dispute Resolution  | = \$ 7,791.19 |
| 2. Shillan is solely liable for:     |               |
| Counterclaim Filing Fee              | = \$ 300.00   |
| Additional Arbitrator Honoraria      | = \$ 150.00   |
| Arbitrator Travel Expenses and Costs | = \$ 2,118.69 |
| Administrative Costs                 | = \$ 135.00   |
| Forum Fees                           | = \$ 4,237.50 |
| Total Fees                           | = \$ 6,941.19 |

Less payments	= \$ 1,125.00
Balance Due NASD Dispute Resolution	= \$ 5,816.19

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1. Shillan is solely liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 300.00
Balance Due NASD Dispute Resolution	= 0.00

2. MSC is solely liable for:

Member Fees	= \$ 1,700.00
Total Fees	= \$ 1,700.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= 0.00

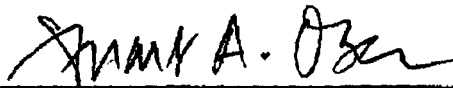
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Stuart A. Ober	-	Non-Public Arbitrator, Presiding Chairperson
William C. McClaskey	-	Non-Public Arbitrator
Darman A. Wing	-	Non-Public Arbitrator

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.

**Concurring Arbitrators' Signatures**



\_\_\_\_\_  
Stuart A. Ober  
Non-Public Arbitrator, Presiding Chairperson

11.17.06

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

\_\_\_\_\_  
William C. McClaskey  
Non-Public Arbitrator

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

\_\_\_\_\_  
Darman A. Wing  
Non-Public Arbitrator

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

November 20, 2006

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)



**ARBITRATION PANEL**

Stuart A. Ober	-	Non-Public Arbitrator, Presiding Chairperson
William C. McClaskey	-	Non-Public Arbitrator
Darman A. Wing	-	Non-Public Arbitrator

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.

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Stuart A. Ober  
Non-Public Arbitrator, Presiding Chairperson

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

  
William C. McClaskey  
Non-Public Arbitrator

Nov. 17, 2006  
Signature Date

\_\_\_\_\_  
Darman A. Wing  
Non-Public Arbitrator

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

November 20, 2006

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)