

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Moshe Marc Cohen ("Claimant") vs. 1717 Capital Management Company and Nationwide Provident ("Respondents")

Case Number: 04-05841

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member and Non-Member.

REPRESENTATION OF PARTIES

Claimant Moshe Marc Cohen hereinafter referred to as ("Claimant"): Mark A. Susswein, Esq., Liddle & Robinson, L.L.P., New York, NY, previously represented by Alyson C. Bruns, Esq., Liddle & Robinson, L.L.P. New York, NY.

Respondents 1717 Capital Management Company ("1717 Capital") and Nationwide Provident ("Nationwide"), hereinafter collectively referred to as ("Respondents"): Christopher C. Coss, Esq., Coss & Momjian, LLP, Bala Cynwyd, PA.

CASE INFORMATION

Statement of Claim filed on or about: August 18, 2004.

Claimant signed the Uniform Submission Agreement: August 16, 2004.

Statement of Answer and Counterclaim filed by Respondent 1717 and Nationwide on or about: November 2, 2004.

Respondents did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: defamation, tortious interference with prospective economic advantage, injurious falsehood, libel for earned commissions and renewal commissions, failure to pay earned commission compensation and violation of the New York Labor Law.

Unless specifically admitted in their Answer, Respondents 1717 Capital and Nationwide denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In their Counterclaim, Respondents asserted the following cause of action: failure to repay monies owed.

RELIEF REQUESTED

Claimant requested that the Panel award him damages in an amount to be determined at hearing, interest at the statutory rate of 9% per annum on all claims from the date said amounts were due; attorneys' fees; costs; and such other and further relief as the Panel deems appropriate.

In their Statement of Answer, Respondents requested that the Statement of Claim be dismissed in its entirety, that Respondents be awarded their attorneys' fees and costs in defending this proceeding and also be awarded relief on the Counterclaim.

In their Counterclaim, Respondents requested damages in the amount of \$1,395.84, together with their cost, attorneys' fees and any additional relief this panel deems proper.

In his response to the Counterclaim, Claimant requested that the Panel dismiss the Counterclaim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents 1717 Capital did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Respondent Nationwide is not a member of NASD and does not have an agreement to arbitrate. However, Nationwide answered the Statement of Claim, appeared and testified at the hearing and is, therefore, bound by the determination of the Panel on all issues submitted.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Moshe Marc Cohen registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Cohen must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. The Panel further recommends that the following record should be expunged:

- a) The termination comment that currently appears in item 3 on the Form U-5 filed with CRD by Respondent 1717 Capital Management Company (CRD 4082) on behalf of Claimant Moshe M. Cohen should be expunged (i.e., "Firm concluded that representative violated firm policies and procedures.") The following language shall replace the original termination comment: "Association between firm and registered representative ended following a good faith disagreement regarding the application of a company policy concerning the use of money orders." The reason for termination shall remain as "discharge".
- b) The description of the nature of the internal review located in item 3 of Part 1 of the Internal Review DRP which now reads "Asset Management Company brought activity in two customer accounts to attention of firm. Investigation led firm to conclude that representative violated various firm policies and procedures. Conclusion of investigation was termination of representative's registration" should also be expunged. The replacement language to item 3 of Part 1 of the Internal Review DRP is as follows: "Association between firm and registered representative ended following a good faith disagreement regarding the application of a company policy concerning the use of money orders." "The affirmative response to Form U-5 question 7B should be expunged and replaced with "no". In addition, the accompanying Form U-5 Internal Review DRP should also be expunged in its entirety as the Internal Review was concluded with Claimant's termination and therefore Claimant was not subject to Internal Review at the time of termination or when the Form U-5 was filed with CRD."
- c) In addition, all Form U-4 references to and disclosure of Claimant's termination from 1717 Capital Management Company should be expunged (e.g., "yes" answer to Form U-4 question 14J(1) and accompanying U-4 Termination DRP).
- d) The expungement recommendations are made with the understanding that, pursuant to NASD Notices to Members 99-09 and 99-54, Claimant Moshe M. Cohen must obtain confirmation of the expungement recommendations contained in the Award from a court of competent jurisdiction before CRD will execute the expungement directives.

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 = \$ 250.00

Counter 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. Accordingly, the Respondent 1717 Capital Management Company is a party.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	= \$ 2,200.00
Total Member fees	= \$ 4,450.00

Adjournment Fees

Adjournment granted during these proceedings for which fees were assessed:

October 10 and 12, 2005, adjournment by Claimant	= \$ 500.00
October 10 and 12, 2005, adjournment by Respondents joint and several	= \$ 500.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), 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 conference session with Panel @ \$1,000.00 per session	= \$ 1,000.00
Pre-hearing conference: January 18, 2005 1 session	

One (1) Hearing session with the Panel @ \$1,000.00 per session	= \$ 1,000.00
Hearing Date: October 11, 2005 1 session	

Total Forum Fees	= \$ 2,000.00
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1. The Panel has assessed \$1,000.00 of the forum fees to Claimant.
2. The Panel has assessed \$1,000.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 250.00
Adjournment Fee	= \$ 500.00
<u>Forum Fees</u>	= \$ 1,000.00
Total Fees	= \$ 1,750.00
<u>Less payments</u>	= \$ 1,500.00
Balance Due NASD Dispute Resolution	= \$ 250.00

2. Respondent 1717 Capital is solely liable for:

Member Fees	= \$ 4,450.00
Total Fees	= \$ 4,450.00
<u>Less payments</u>	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 00.00

3. Respondents are jointly and severally liable for:

Counterclaim filing fee	= \$ 300.00
Forum Fee	= \$ 1,000.00
<u>Adjournment fee</u>	<u>= \$ 500.00</u>
Total Fees	= \$ 1,800.00
<u>Less payment</u>	<u>= \$ 00.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,800.00

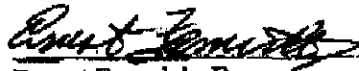
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Ernest Fanwick, Esq.	-	Public Arbitrator, Presiding Chairperson
William E.S. Browning, Esq.	-	Non-Public Arbitrator
Bennett A. Hall	-	Public Arbitrator

Concurring Arbitrators' Signature(s)

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.



Ernest Fanwick, Esq.
Public Arbitrator, Presiding Chairperson

11/2/05
Signature Date

Bennett A. Hall
Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

William E.S. Browning, Esq.
Non-Public Arbitrator

Signature Date

October 28, 2005
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

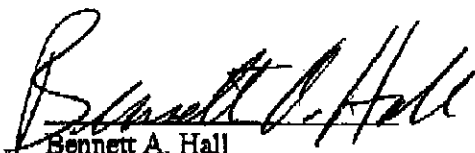
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Ernest Fanwick, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Bennett A. Hall
Public Arbitrator


Signature Date

Dissenting Arbitrator's Signature

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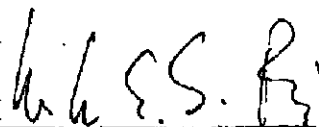
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