

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

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In the Matter of the Arbitration Between:

National Planning Corporation, LLC (Claimant) v. Robert Lesser (Respondent)

Case Number: 04-06074

Hearing Site: New York, New York

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Nature of the Dispute: Member vs. Associated Person.

**REPRESENTATION OF PARTIES**

Claimant National Planning Corporation, LLC hereinafter referred to as "Claimant": Dan Hulea, Esq., previously Dianna McCarthy, Esq., Winget Spadafora & Schwartzberg, LLP, New York, NY.

Respondent Robert Lesser hereinafter referred to as "Respondent" did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: August 23, 2004.

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

Respondent did not file a Statement of Answer or sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following cause of action: breach of Promissory Note dated October 22, 2002.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$15,000.00; interest at the statutory rate of 9% from March 9, 2004; attorneys' fees and disbursements; and other such relief as the Panel considers just and proper.

**OTHER ISSUES CONSIDERED AND DECIDED**

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrator (the "Arbitrator") determined that Respondent has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter

would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code is bound by the determination of the Arbitrator on all issues submitted.

On or about February 11, 2005, Claimant made a Motion for Default Judgment, or Alternatively, for an Order Stipulating That the Matter Will Be Decided on the Papers, and Ordering the Respondent to Appear by a Date Certain, and for Sanctions Against the Respondent Robert Lesser. Respondent did not submit a response to the motion. After due consideration, the Arbitrator denied the Motion for Default Judgment, but granted Claimant's stipulation that the matter be decided solely on the papers submitted.

### **AWARD**

After considering the pleadings, and the testimony and evidence presented, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of \$15,000.00 as reflected on the Note signed 10/24/02, less any portion of the amount forgiven on the first anniversary date of the Note as per Section D.(1) of the Note. The principal amount is also to be reduced by any deductions already taken from commissions, compensation, or earnings by the Company or any of its subsidiaries as per section E. of the Note.
2. Respondent is liable for and shall pay to Claimant interest at the rate of 3.46% compounded annually from October 31, 2002 (the date the check was issued to Respondent Lesser, copy of the check included with the Statement of Claim) through the date of payment of the principal and interest.
3. 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
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#### **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, National Planning Corporation is a party.

Member surcharge	= \$425.00
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**Forum Fees and Assessments**

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with the sole arbitrator @ \$450.00	= \$ 900.00
Pre-hearing conferences: January 31, 2005 1 session	
April 1, 2005 1 session	
<u>Decision on papers</u>	= \$ 300.00
Total Forum Fees	= \$1,200.00

1. The Arbitrator has assessed the forum fees totaling \$1,200.00 against Respondent.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 750.00
<u>Member Fees</u>	= \$ 425.00
Total Fees	= \$1,175.00
<u>Less payments</u>	= \$1,625.00
Refund Due Claimant	= \$ 450.00

2. Respondent is solely liable for:

<u>Forum Fees</u>	= \$ 1,200.00
Total Fees	= \$ 1,200.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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

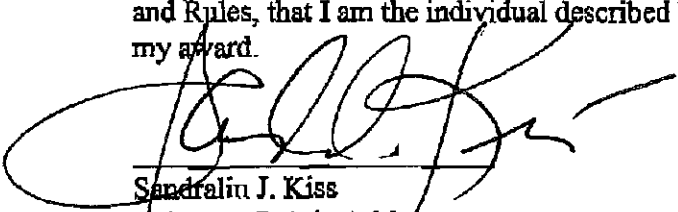
**ARBITRATOR**

Sandralin J. Kiss

Sole Non-Public Arbitrator

**Arbitrator's Signature**

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.



Sandralin J. Kiss  
Sole Non-Public Arbitrator

4/20/05  
Signature Date

April 27, 2004

Date of Service (For NASD Dispute Resolution use only)