

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Capstone Investments, Inc., Claimant v. Lamon & Stern, Inc., Respondent

Case Number: 04-06477

Hearing Site: San Diego, California

Nature of the Dispute: Member v. Member

REPRESENTATION OF PARTIES

For Claimant:

Andrew B. Serwin, Esq.
Foley & Lardner LLP
San Diego, California

Scott L. Dahle, Esq.
Capstone Investments, Inc.
Palos Verdes Estates, California

For Respondent:

Randall R. Rainer, Esq.
Wollmuth Maher & Deutsch LLP
New York, New York

CASE INFORMATION

Statement of Claim filed: September 9, 2004

Claimant's Uniform Submission Agreement signed: September 9, 2004

Statement of Answer filed by Respondent: November 3, 2004

Respondent's Uniform Submission Agreement signed: November 2, 2004

CASE SUMMARY

Claimant alleged unjust enrichment and breach of contract.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in excess of \$300,000.00, interest, and costs, including attorney's fees.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety, attorney's fees, costs, disbursements, and that sanctions be imposed against Claimant for its rules violations.

OTHER ISSUES CONSIDERED AND DECIDED

On November 8, 2004, Claimant's counsel signed a Waiver Agreement on Claimant's behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

At the hearing on June 23, 2005, the Panel denied Claimant's Motion for Summary Judgment and Respondent's Motion for Summary Judgment. Respondent was permitted to request the recovery of attorney's fees and the calculation of the previous arbitration award was disallowed.

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, testimony, and evidence presented at the hearing, the Panel 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 parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

FEEES

Pursuant to the *Code of Arbitration Procedure* ("Code"), the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 1,000.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Capstone Investments, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

The member firm Lamon & Stern, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

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 arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00

Pre-hearing conference:	May 20, 2005	1 session
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Two (2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$ 2,250.00

Pre-hearing conferences:	January 26, 2005	1 session
	March 10, 2005	1 session

Four (4) Hearing sessions @ \$1,125.00/session = \$ 4,500.00

Hearings:	June 23, 2005	2 sessions
	June 24, 2005	2 sessions

Total Forum Fees	= \$ 7,200.00
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1. The Panel assessed \$3,600.00 of the forum fees to Claimant.
2. The Panel assessed \$3,600.00 of the forum fees to Respondent.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 3,600.00</u>
Total Fees	= \$ 9,800.00
<u>Less payments</u>	<u>= \$(7,325.00)</u>
Balance Due NASD Dispute Resolution	= \$ 2,475.00

2. Respondent is charged with the following fees and costs:

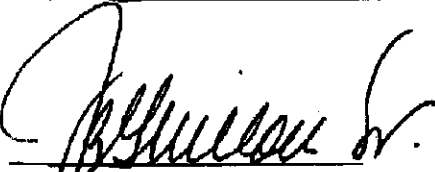
Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 3,600.00</u>
Total Fees	= \$ 8,800.00
<u>Less payments</u>	<u>= \$(5,200.00)</u>
Balance Due NASD Dispute Resolution	= \$ 3,600.00

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

ARBITRATION PANEL

James B. Guillou, Sr.	-	Non-Public Arbitrator, Presiding Chair
James O. Johnson, Jr.	-	Non-Public Arbitrator
James W. Richards	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


James B. Guillou, Sr.
Chair, Non-Public Arbitrator

6/27/05
Signature Date

James O. Johnson, Jr.
Non-Public Arbitrator

Signature Date

James W. Richards
Non-Public Arbitrator

Signature Date

6/28/05
Date of Service

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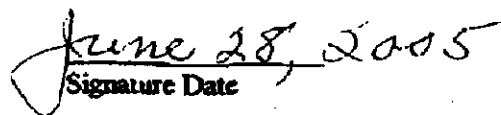
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Chair, Non-Public Arbitrator

Signature Date


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Non-Public Arbitrator


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