

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

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In the Matter of the Arbitration Between:

Richard McLoone (Claimant) vs. Chicago Investment Group, L.L.C., Michael Delcervo, Michael Kalfa, Frank Lunn, and Richard Lynch (Respondents)

Case Number: 04-06871

Hearing Site: New York, New York

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Nature of the Dispute: Associated Person vs. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimant Richard McLoone hereinafter referred to as "Claimant": James E. Nealon, Esq., Kelley Drye & Warren LLP, New York, NY.

Respondents Chicago Investment Group, L.L.C. ("Chicago Investment"), Richard Lynch ("Lynch"), Michael Kalfa ("Kalfa"): Jerold N. Siegan, Esq., and David Gorman, Esq., Arnstien & Lehr, LLP, Chicago, IL.

Respondent Frank Lunn ("Lunn"): Roger R. Crane, Esq., Nixon Peabody, New York, NY.

Respondent Michael Delcervo ("Delcervo") did not enter an appearance in this matter except for submitting a signed Uniform Submission Agreement.

**CASE INFORMATION**

Amended Statement of Claim filed on or about: September 29, 2004.  
Claimant signed the Uniform Submission Agreement: September 16, 2004.

Joint Statement of Answer filed by Chicago Investment, Lynch, and Kalfa on or about: February 22, 2005.

Chicago Investment signed the Uniform Submission Agreement: February 14, 2005.

Lynch signed the Uniform Submission Agreement: February 14, 2005.

Kalfa signed the Uniform Submission Agreement: February 25, 2005.

Statement of Answer filed by Lunn on or about: February 17, 2005.

Lunn did not sign the Uniform Submission Agreement.

Delcervo signed the Uniform Submission Agreement: March 17, 2005.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; declaratory judgment; failure to compensate; fraud; unjust enrichment; implied contract; and, promissory estoppel.

Unless specifically admitted in their Answer, Respondents Chicago Investment, Lynch, and Kalfa denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

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

### **RELIEF REQUESTED**

Claimant requested unspecified compensatory damages, unspecified punitive damages, interest, attorney's fees, costs, and all other relief that the Panel may award.

Respondents Chicago Investment, Lynch, and Kalfa requested that Claimant's claims be dismissed in their entirety.

Respondents Lunn requested that Claimant's claims be dismissed in their entirety and that he be awarded attorneys' fees, costs and all other relief ordered by the Panel.

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

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Respondent Delcervo 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 Lunn 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, is bound by the determination of the Panel on all issues submitted.

On or about September 29, 2004, Claimant filed with NASD a Statement of Claim. On about December 6, 2004 Claimant filed an Amended Statement of Claim. Pursuant to Claimant's request, NASD served only the Amended Statement of Claim and not the Statement of Claim upon the Respondents.

On June 6, 2005, a telephonic conference was held with the parties and the Panel to hear oral arguments on Respondent Chicago Investment, Kalfa, Lunn, and Richard Lynch's Motion to Dismiss. After due deliberation by the arbitrators, the Panel determined to grant Lunn's Motion to Dismiss and deny the Motion to Dismiss made by Respondents Chicago Investment, Kalfa, and Lynch.

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. Respondents Chicago Investment, Delcero, Kalfa, and Lynch are jointly and severally liable for and shall pay to the Claimant \$200,000.00 in compensatory damages, plus interest at the New York statutory rate accruing from February 3, 2004 until the Award is paid in full.
2. 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:

Initial claim filing fee	= \$ 250.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, Chicago Investment Group, L.L.C., is a party.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

January 25, 26, 31, 2006 and February 1 and 2, 2006, adjournment by Respondents  
= \$ 1,000.00

Chicago Investment's share      \$1,000.00

November 2 and 14, 2006 adjournment by Respondents Lynch, Chicago Investment,  
and Kalfa      = \$ 1,000.00

Claimant's share      \$ 500.00

Chicago Investment's share      \$ 500.00

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

November 2 and 14, 2006, adjournment by the parties	= \$	300.00
Claimant's share	\$	150.00
Chicago Investment's share	\$	150.00

### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing conference sessions with Panel at \$1,000.00 per session		
Pre-hearing conferences: April 25, 2005	1 session	= \$ 2,000.00
June 6, 2005	1 session	

Eleven (11) Hearing sessions at \$1,000.00 per session			= \$11,000.00
Hearing Dates:	May 16, 2006	2 sessions	
	May 17, 2006	2 sessions	
	May 18, 2006	1 session	
	October 24, 2006	2 sessions	
	November 28, 2006	2 sessions	
	November 29, 2006	2 sessions	
<hr/> Total Forum Fees			<hr/> \$ 13,000.00

1. The Panel has assessed \$6,500.00 of the forum fees against the Claimant.
2. The Panel has assessed \$6,500.00 of the forum fees, jointly and severally, against Respondents Chicago Investment, Delcervo, Kalfa, and Lynch.

### **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 security.

1. Claimant requested duplication of 11 tapes @ \$15.00 per tape = \$ 165.00
2. Chicago Investment requested duplication of 8 tapes @ \$15.00 per tape = \$ 120.00

### **Fee Summary**

1. Claimant is solely liable for:	
Initial Filing Fee	= \$ 250.00
Adjournment Fees	= \$ 500.00
Three-Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 6,500.00
Administrative Costs	= \$ 165.00
Total Fees	= \$ 7,565.00
Less payments	= \$ 1,500.00
Balance Due NASD Dispute Resolution	= \$ 6,065.00

2. Chicago Investment is solely liable for:

Member Fees	= \$ 4,450.00
Adjournment Fee	= \$ 1,500.00
Three-Day Cancellation Fee	= \$ 150.00
<u>Administrative Costs</u>	<u>= \$ 120.00</u>
Total Fees	= \$ 6,220.00
<u>Less payments</u>	<u>= \$ 4,450.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,770.00

3. Respondents Chicago Investment, Kalfa, Delcervo, and Lynch are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 6,500.00</u>
Total Fees	= \$ 6,500.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 6,500.00

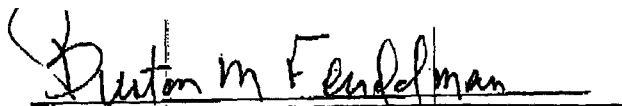
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Burton M. Fendelman, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Christal J. Henner	-	Non-Public Arbitrator
Paul J. Camilleri, Esq.	-	Non-Public Arbitrator

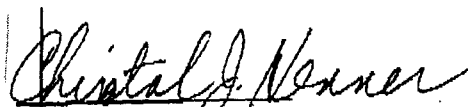
**Concurring Arbitrators' Signatures**

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.



Burton M. Fendelman, Esq.  
Non-Public Arbitrator, Presiding Chairperson

4 December 2006  
Signature Date



Christal J. Henner  
Non-Public Arbitrator

12-5-2006  
Signature Date

\_\_\_\_\_  
Paul J. Camilleri, Esq.  
Non-Public Arbitrator

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

**December 6, 2006**

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Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Burton M. Fendelman, Esq.	-	Public Arbitrator, Presiding Chair
Christal J. Henner	-	Public Arbitrator
Paul J. Camilleri, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Burton M. Fendelman, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Christal J. Henner  
Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
Paul J. Camilleri, Esq.  
Non-Public Arbitrator

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

December 6, 2006  
Date of Service (For NASD Dispute Resolution use only)