

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Paul C. Spoelstra

and

04-07001
Chicago, Illinois

Name of Respondent

John I. Moore

Nature of the Dispute: Associated Person vs. Associated Person.

REPRESENTATION OF PARTIES

Paul C. Spoelstra ("**Claimant**") was represented by Anthony Paduano, Esq., and Willard Knox, Esq., Paduano & Weintraub, LLP, New York, New York.

John I. Moore ("**Respondent**") was represented by Daniel Langdon, Esq., Grand Rapids, Michigan. At the time of filing his Answer and Counterclaim, Respondents was represented by Sean P. Fitzgerald, Esq., Grand Rapids, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about October 4, 2004. Reply and Affirmative Defenses of Claimant was filed on or about January 24, 2005. Submission Agreement of Claimant Paul C. Spoelstra was signed on October 1, 2004.

Answer to Statement of Claim, Affirmative Defenses and Counterclaim was filed by Respondent John I. Moore on or about December 3, 2004.

CASE SUMMARY

Claimant alleged that he and Respondent entered into an Agreement where in he agreed to purchase Respondent's "book of business". Claimant asserted the following causes of action: breach of contract; tortious interference with business relationships; and fraud. Specifically, Claimant stated:

Respondent failed to disclose to Mr. Spoelstra that he had recommended unsuitable investment strategies to at least two of his clients. Respondent also misrepresented that he would deliver his clients to Mr. Spoelstra. Respondent's "book" of business was not what

Respondent represented it to be, and thus was not worth the agreed upon price. Respondent knew this, but hid his knowledge and his real intentions from Mr. Spoelstra. Indeed, Respondent actively dissuaded one of his largest clients from doing business with Mr. Spoelstra. Despite Respondent's material breaches of the Agreement, Mr. Spoelstra has to date paid Respondent \$101,003.00.

Respondent denied the allegations set forth in the Statement of Claim. In his Counterclaim, Respondent stated that Claimant breached the terms of the agreement by failing to complete payments under the terms of the Agreement.

RELIEF REQUESTED

Claimant requested an award as follows:

- A. Compensatory damages in the amount of \$101,003.00, comprised of the amount Claimant has paid Respondent on the Agreement;
- B. Prospective damages, comprised of lost business resulting from Respondent's disparagement of Claimant, and of Claimant's potential liability as a result of Respondent's wrongdoing with respect to his customers, in an amount to be determined at trial;
- C. Reasonable attorney's fees and the costs of their action; and
- D. Such other and further relief as the Panel deems just and proper.

In his Reply and Affirmative Defense of Claimant, Claimant requested that the Arbitration Panel enter judgment in his favor dismissing the Counterclaim, and against Respondent as follows:

- A. For attorney's fees, costs and disbursements; and
- B. For such other and different relief as the Panel may deem just and proper.

Respondent requested:

- 1. Findings of fact and conclusions of law that Respondent John Moore did not Breach the Agreement entered into on April 19, 2001 between the Claimant and Mr. Moore.
- 2. Findings of fact and conclusions of law that Mr. Moore did not interfere with any business relationships of Claimant.
- 3. Findings of fact and conclusions of law that Mr. Moore did not make any material misrepresentations to Claimant regarding his "book of business".
- 4. Dismissal of Claimant's Statement of Claim.
- 5. Reasonable attorney's fees and costs in defending this action.
- 6. Such other and further relief as this Panel deems just and proper.

In his Counterclaim, Respondent requested the following relief:

Compensatory damages in the amount of \$148,997.00 which is the amount due and owing by Counter-Respondent under the terms of the Agreement;
Reasonable attorney's fees and the costs of this action; and
Such other and further relief as the Panel deems just and appropriate.

OTHER ISSUES CONSIDERED & DECIDED

Respondent John I. Moore did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

The panel granted the request of John I. Moore to hold the hearing in a location that would accommodate video conferencing. The panel granted this request on the condition that Mr. Moore would be responsible for any costs associated with this request. Please note that Mr. Moore may receive additional invoices that reflect the amount owed for the rental of hearing space to accommodate the request for video conferencing facilities after service of this award.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent John I. Moore is liable for and shall pay to Claimant Paul C. Spoelstra the sum of \$33,315.00 (**Thirty Three Thousand Three Hundred Fifteen Dollars and No Cents**).
2. Counterclaim Respondent Paul C. Spoelstra is liable for and shall pay to Counterclaim Claimant John I. Moore the sum of \$148,996.52 (**One Hundred Forty Eight Thousand Nine Hundred Ninety Six Dollars and Fifty Two Cents**). After applying an offset of the amounts awarded above, the net amount due is \$115,681.52 (**One Hundred Fifteen Thousand Six Hundred Eighty One Dollars and Fifty Two Cents**).
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

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	= \$300.00
Counter claim/Cross claim/Third Party 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Ameriprise Financial Services.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

Adjournment Fees

Adjournments requested during these proceedings:

Hearing Date(s), November 15-18, 2005 adjournment requested by John I. Moore	= \$1,125.00
Fee waived by the Arbitration Panel	

Forum Fees and Assessments

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

3 Pre-hearing session(s) with Panel	@	1,125.00	\$	3,375.00
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	April 11, 2005	1	session		
	December 7, 2005	1	session		
	December 15, 2005	1	session		
4 Hearing sessions		@	1,125.00	\$	4,500.00
	April 18, 2006	2	sessions		
	April 19, 2006	2	sessions		
	Total Forum Fees			\$	<u>7,875.00</u>

The Arbitration Panel has assessed \$3,937.50 of the forum fees to Paul C. Spoelstra.
The Arbitration Panel has assessed \$3,937.50 of the forum fees to John I. Moore.

Fee Summary

Claimant, Paul C. Spoelstra, is liable for:

Initial Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	<u>3,937.50</u>
Total Fees	= \$	4,237.50
<u>Less payments</u>	= \$	<u>-1,725.00</u>
Balance Due NASD Dispute Resolution	= \$	2,512.50

Respondent, Ameriprise Financial Services, is liable for:

Member Fees	= \$	5,200.00
Total Fees	= \$	<u>5,200.00</u>
<u>Less payments</u>	= \$	<u>-5,200.00</u>
Balance Due NASD Dispute Resolution	= \$	0.00

Respondent, John I. Moore, is liable for:

Counterclaim Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	<u>3,937.50</u>
Total Fees	= \$	4,237.50
<u>Less payments</u>	= \$	<u>-1,725.00</u>
Balance Due NASD Dispute Resolution	= \$	2,512.50

All balances are due to NASD Dispute Resolution

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ARBITRATION PANEL

David O. Juveland, Esq. – Non-Public Arbitrator, Presiding Chair
Howard B. Silverman – Non-Public Arbitrator
Michael J. Stoken – Non-Public Arbitrator

Concurring Arbitrators:



David O. Juveland, Esq.
Non-Public Arbitrator, Presiding Chair

April 24, 2006
Signature Date

Howard B. Silverman
Non-Public Arbitrator

Signature Date

Michael J. Stoken
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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ARBITRATION PANEL

David O. Juveland, Esq. - Non-Public Arbitrator, Presiding Chair
Howard B. Silverman - Non-Public Arbitrator
Michael J. Stoken - Non-Public Arbitrator

Concurring Arbitrators:

David O. Juveland, Esq.
Non-Public Arbitrator, Presiding Chair

Signature Date

Howard B. Silverman
Howard B. Silverman
Non-Public Arbitrator

4/24/2006
Signature Date

Michael J. Stoken
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Concurring Arbitrators:

David O. Juveland, Esq.
Non-Public Arbitrator, Presiding Chair

Signature Date

Howard B. Silverman
Non-Public Arbitrator

Signature Date

Michael J. Stoken

Michael J. Stoken
Non-Public Arbitrator

24 Apr 2006

Signature Date

Date of Service (For NASD office use only)