

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

Kurtis Fechtmeyer, Claimant v. Pacific Growth Equities, LLC, Richard H. Osgood, III and George J. Milstein, Respondents

Case Number: 04-07045

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimant:

William F. Murphy
Dillingham & Murphy, LLP
San Francisco, California

For Respondents:

Gilbert R. Serota
Howard Rice Nemerovski
Canady Falk & Rabkin
San Francisco, California

CASE INFORMATION

Amended Statement of Claim filed: October 13, 2004

Claimant's Hearing Brief filed: August 31, 2005

Claimant Kurtis Fechtmeyer's Uniform Submission Agreement signed: October 12, 2004

Joint Statement of Answer of Respondents Pacific Growth Equities, LLC ("PGE"), Richard H. Osgood, III and George J. Milstein filed: December 3, 2004

Respondents' Pre-Hearing Brief filed: August 31, 2005

CASE SUMMARY

Claimant alleged the following claims with respect to his employment with PGE: 1) Breach of Contract against PGE; 2) Breach of Covenant of Good Faith and Fair Dealing against PGE; 3) Violation of Calif. Labor Code §§200-203 against PGE; 4) Fraud against all Respondents; 5) Unjust Enrichment against all Respondents; 6) Common Law Defamation against all Respondents; 7) Violation of NASD Rule 1150; 8) Tortious Interference with Prospective Business Relations against all Respondents; and 9) Punitive damages against all Respondents.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested an award in his favor as follows:

1. On Count I, for breach of contract against PGE, an amount to be determined, but believed to exceed \$200,000.00;
2. On Count II, for breach of covenant of good faith and fair dealing against PGE, an amount to be determined, but believed to approximate \$200,000.00;
3. On Count III, for violation of Calif. Labor Code Sections 200-203 against PGE, an amount to be determined, but believed to approximate \$200,000.00, plus interest and attorney's fees;
4. On Count IV, for fraud against all Respondents, jointly and severally, an amount to be determined, but believed to exceed \$1,000,000.00, plus punitive damages according to proof;
5. On Count V, for unjust enrichment against all Respondents, jointly and severally, an amount to be determined, but believed to exceed \$1,000,000.00;
6. On Count VI, for common law defamation against all Respondents, jointly and severally, an amount to be determined, but believed to exceed \$1,000,000.00, plus punitive damages according to proof;
7. On Count VII, for violation of NASD Rule 1150 against all Respondents, an amount to be determined, but believed to exceed \$1,000,000.00, plus punitive damages according to proof;
8. On Count VII, for violation of NASD Rule 1150 against all Respondents, an order directing them to withdraw and correct the statement of the Form U-5;
9. On Count VIII, for Tortious Interference with Prospective Business Relations against all Respondents, an amount to be proven, but believed to exceed \$1,000,000.00, plus punitive damages according to proof; and
10. On Counts IV, VI, VII, VIII, and IX, an award of punitive damages in an amount to be proven; and
11. On all Counts, such other and further relief for Claimant as the Panel deems just and proper.

Respondents requested that the Panel enter an award in favor of Respondents dismissing all claims and assessing all costs against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

On December 27, 2004, Claimant and Claimant's counsel signed a Waiver Agreement 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.

Respondents did not file with NASD Dispute Resolution ("NASD-DR") properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered Claimant's Claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

During the hearing, the Panel considered the positions of the parties relative to Respondent's Motion to Dismiss made at the close of Claimant's case. The Panel denied the Motion.

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 for Breach of Contract, Breach of Covenant of Good Faith and Fair Dealing, Violation of Calif. Labor Code, Fraud, Unjust Enrichment, Defamation, Violation of NASD Rule 1150, Tortious Interference with Prospective Business Relations, and Punitive damages are denied.
- 2) Claimant's Form U-5 shall be reformed under Section 3, as follows: Under Reason for Termination, the form shall read: "Management/employee compensation dispute." The present reason: "Management determined performance to be unsatisfactory" shall be expunged.
- 3) Each party shall bear its own costs, including attorney's fees.

4) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$500.00

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, PGE is a party and the following fees are assessed:

Member Surcharge = \$2,800.00

Pre-Hearing Process Fee = \$ 750.00

Hearing Process Fee = \$5,000.00

Total Member Fees = \$8,550.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

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

Pre-hearing conference: August 15, 2005 1 session

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$1,200.00

Pre-hearing conference: February 24, 2005 1 session

(7) Hearing sessions @ \$1,200.00/session = \$8,400.00

Hearings: September 13, 2005 2 sessions

September 14, 2005 2 sessions

September 15, 2005 2 sessions

September 16, 2005 1 session

Total Forum Fees = **\$10,050.00**

The Panel assessed \$5,025.00 of the forum fees to Claimant.

The Panel assessed \$5,025.00 of the forum fees jointly and severally to Respondents PGE, Richard H. Osgood, III and George J. Milstein.

Fee Summary

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

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 5,025.00
Total Fees	= \$ 5,525.00
<u>Less Payments</u>	= \$(1,800.00)
Balance Due NASD-DR	= \$ 3,725.00

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

Member Fees	= \$ 8,550.00
<u>Less Payments</u>	= \$(8,550.00)
Balance Due NASD-DR	= \$ 0.00

3. Respondents PGE, Richard H. Osgood, III and George J. Milstein are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 5,025.00
<u>Less Payments</u>	= \$(0.00)
Balance Due NASD-DR	= \$ 5,025.00

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

ARBITRATION PANEL

Herb Schwartz	-	Public Arbitrator, Presiding Chair
Thomas C. McNally, III, Esq.	-	Public Arbitrator
Richard C. Solow	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Herb Schwartz
Chair, Public Arbitrator

9/29/05
Signature/Date

Thomas C. McNally, III, Esq.
Public Arbitrator

Signature Date

Richard C. Solow
Non-Public Arbitrator

Signature Date

10/03/05
Date of Service

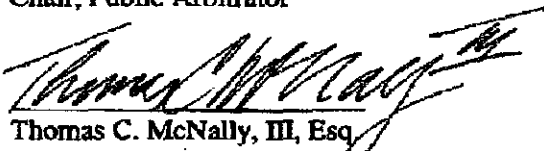
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Chair, Public Arbitrator

Signature Date


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Herb Schwartz
Chair, Public Arbitrator

Signature Date

Thomas C. McNally, III, Esq.
Public Arbitrator

Signature Date


Richard C. Solow
Non-Public Arbitrator

Oct. 1, 2005
Signature Date

10/6/05
Date of Service