

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Milestone Financial Services, Inc. (Claimant) vs. Joseph Broyles, John Bergen and James Byrns (Respondents)

Case Number: 04-07282

Hearing Site: New York, New York

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Nature of the Dispute: Member vs. Associated Persons

**REPRESENTATION OF PARTIES**

Claimant Milestone Financial Services, Inc. hereinafter referred to as "Claimant": Margaret A. DeGooyer, Esq. and Gordon C. Young, Esq., Keesal, Young & Logan, San Francisco, CA.

Respondent Joseph Broyles hereinafter referred to as "Broyles" appeared *pro se*.

Respondent John Bergen hereinafter referred to as "Bergen": Lawrence R. Gelber, Esq., Brooklyn, NY.

Respondent James Byrns hereinafter referred to as "Byrns" appeared *pro se*.

**CASE INFORMATION**

Statement of Claim filed on or about: October 15, 2004.

Claimant signed the Uniform Submission Agreement: October 11, 2004.

Respondent Broyles did not submit a Statement of Answer.

Respondent Broyles did not submit a Uniform Submission Agreement.

Statement of Answer filed by Respondent Bergen on or about: January 6, 2005.

Respondent Bergen signed the Uniform Submission Agreement: January 10, 2005.

Statement of Answer filed by Respondent Byrns on or about: January 14, 2005.

Respondent Byrns signed the Uniform Submission Agreement: January 14, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: Claimant alleged that pursuant to the Independent Contractor and Securities Sales Agreements between Respondents and Claimant, Respondents failed to pay attorneys' fees, costs, and damages associated with three separate arbitration actions in which Respondents were named.

In his Answer, Respondent Bergen acknowledged that he had an unspecified monetary responsibility to Claimant.

In his Answer, Respondent Byrns stated that on or about May 4, 2000 he entered into an Agreement with Claimant and was treated as an Independent Contractor. Respondent Byrns also stated that on or about January 4, 2005, he and Claimant negotiated and came to a verbal agreement to settle the claim.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$282,668.93, interests, attorneys' fees and costs.

Respondent Bergen in his Answer is seeking a more equitable distribution of liability which will hopefully come through more detailed negotiations with Claimant and not an arbitration proceeding.

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

Respondent Broyles did not file with NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

On or about September 6, 2005, Claimant informed NASD Dispute Resolution that it dismissed its claim against Respondent Byrns.

On or about April 20, 2006, Claimant informed NASD Dispute Resolution that it settled its claim against Respondent Bergen and on May 2, 2006 submitted a Stipulated Award.

Claimant and Respondent Bergen have entered into a confidential Settlement Agreement pursuant to which Claimant has agreed to release Respondent Bergen from any and all claims which were the subject of this arbitration upon completion of Respondent Bergen's payment obligations under the Settlement Agreement. In the event Respondent Bergen defaults on his obligations under the Settlement Agreement, the parties agreed to jointly submit this Stipulated Award to the NASD to be entered.

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**

The parties entered into an agreement to present to the Panel a Stipulated Award.

Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Claimant's claims are dismissed in their entirety.
2. Respondent Bergen will pay to Claimant Eighty-five Thousand Dollars and No Cents (\$85,000.00) less any payments made under the Settlement Agreement, plus interest thereon at the annual rate of ten percent (10%) (compounded) and reasonable attorneys fees which Milestone incurs in the enforcement and/or collection of Respondent Bergen's obligations under the Settlement Agreement.
3. Any and all relief not specifically addressed herein is denied in its entirety.

### **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	= \$1,000.00
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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. In this matter, Milestone Financial Services, Inc. is a party.

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. 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. Forum fees associated with these proceedings are:

One (1) Decision on discovery-related motion on the papers with single arbitrator @ \$200.00.	= \$ 200.00
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Claimant submitted one (1) discovery-related motion

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Arbitration No. 04-07282  
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One (1) Pre-hearing conference session with a single arbitrator @ \$ 450.00 = \$ 450.00  
Pre-hearing conference: September 30, 2005 1 session

One (1) Pre-hearing conference session with the Panel @ \$1,125.00 = \$1,125.00

Pre-hearing conference: May 5, 2005 1 session  
Total Forum Fees = \$1,775.00

1. The parties agreed that Claimant shall pay \$887.50 of the forum fees.
2. The parties agreed that Respondent Bergen shall pay \$887.50 of the forum fees.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,125.00
<u>Total Fees</u>	<u>= \$ 7,325.00</u>
<u>Less payments</u>	<u>= \$ 7,325.00</u>
Balance Due Dispute Resolution	= \$ 0.00

*Pursuant to Rule 10205(f) of the Code of Arbitration Procedure, NASD is retaining the total initial amount of the hearing session deposited by the Claimant because this office was notified by the parties that they settled within eight business days of the first scheduled hearing session.*

2. Respondent Bergen is solely liable for:

Forum Fees	= \$ 887.50
<u>Total Fees</u>	<u>= \$ 887.50</u>
<u>Less Payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 887.50

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

**ARBITRATION PANEL**

Brian S. Hamburger, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Glen R. Stifelman	-	Non-Public Arbitrator
Joseph R. Brancalone	-	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.



Brian S. Hamburger, Esq.  
Non-Public Arbitrator, Presiding Chairperson

5/31/06  
Signature Date

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Glen R. Stifelman  
Non-Public Arbitrator

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Signature Date

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Joseph R. Brancalone  
Non-Public Arbitrator

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Signature Date

June 21, 2006  
Date of Service (For NASD Dispute Resolution use only)

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