

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Ed Marks

Case Number: 04-07524

Names of the Respondents
Eugene A. Profit
E.S. Marks & Company, Inc.

Hearing Site: Baltimore, MD

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

REPRESENTATION OF PARTIES

Claimant, Ed Marks, hereinafter referred to as "Claimant", was represented by Robert N. Kilberg, Esq., Robert N. Kilberg, P.A., Towson, Maryland.

Respondents, Eugene A. Profit ("Profit") and E.S. Marks & Company, Inc. ("E.S. Marks"), hereinafter collectively referred to as "Respondents", were not represented by counsel; Mr. Profit appeared on behalf of Respondents *pro se*.

CASE INFORMATION

Statement of Claim filed on October 25, 2004.

Claimant signed the Uniform Submission Agreement on October 18, 2004.

Claimant filed an Amended Statement of Claim on April 18, 2005.

Statement of Answer filed by Respondents on December 17, 2004.

Respondent Profit signed the Uniform Submission Agreement on December 16, 2004.

Eugene A. Profit, President, executed Respondent E.S. Marks' Uniform Submission Agreement on December 30, 2004.

Respondents filed Motion to Strike Amended Statement of Claim and Motion to Dismiss Eugene Profit on April 26, 2005.

CASE SUMMARY

Claimant, in his Statement of Claim and Amended Statement of Claim asserted the following cause of action: breach of employment contract.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

Claimant in his Amended Statement of Claim requested:

| | |
|----------------------|-------------|
| Compensatory Damages | \$16,374.53 |
| Attorneys' Fees | \$ 1,500.00 |
| Other Costs | \$ 575.00 |

OTHER ISSUES CONSIDERED AND DECIDED

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.

On June 6, 2005 the Sole Arbitrator denied Respondents' Motion to Dismiss Eugene Profit.

On June 6, 2005 the Sole Arbitrator granted Claimant's Motion to Amend Statement of Claim as to compensatory damages requested and denied the motion as to the joining of additional respondents.

At the hearing Respondent Profit renewed his Motion to Dismiss. The Arbitrator granted the motion..

AWARD

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

1. Respondent E.S. Marks is liable to and shall pay to Claimant compensatory damages of \$14,100.00 plus interest at the rate of 1% per month on that amount. Interest shall be calculated on a simple basis and shall accrue commencing 30 days after service of the Award until paid in full;
2. All claims against Eugene Profit are dismissed, with prejudice, in their entirety;
3. All claims for attorneys' fees are denied in their entirety;
4. The parties shall bear their respective costs, except as Fees are specifically addressed below; and
5. 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 = \$ 125.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, E.S. Marks is a party.

Member surcharge = \$ 425.00

Total Member Fees = \$ 425.00

Forum Fees and Assessments

The Arbitrator has assessed forum fees for each session conducted. A 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:

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

Pre-hearing conference: April 11, 2005 1 session

Two (2) Hearing sessions @ \$450.00 = \$ 900.00

Hearing Date: July 20, 2005 2 sessions

Total Forum Fees = \$1,350.00

1. The Arbitrator has assessed \$675.00 of the forum fees to Claimant.
2. The Arbitrator has assessed \$675.00 of the forum fees jointly and severally to Respondents.

FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee = \$ 125.00

Forum Fees = \$ 675.00

Total Fees = \$ 800.00

Less payments = \$ 575.00

Balance Due NASD Dispute Resolution = \$ 225.00

2. Respondent E.S. Marks is assessed and shall pay the following fees:

Member Fees = \$ 425.00

Total Fees = \$ 425.00

Less payments = \$ 425.00

Balance Due NASD Dispute Resolution = \$ 00.00

4. Respondents are jointly and severally assessed and shall pay the following fees:

Forum Fees = \$ 675.00

Total Fees = \$ 675.00

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| | |
|-----------------------|-------------|
| Less payments | = \$ 750.00 |
| Refund Due E.S. Marks | = \$ 75.00 |

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

SOLE ARBITRATOR

Bonnie K. Wachtel, Esq.

Non-Public Arbitrator

Sole Arbitrator's Signature



Bonnie K. Wachtel, Esq.
Public Arbitrator, Presiding Chairperson

7-27-05

Signature Date

7/28/05

Date of Service (For NASD Dispute Resolution office use only)